Public Utilities
FORTNIGHTLY

VOL. X; NO. 9 OCTOBER 27, 1932

Five Needs of Regulation

An Open Letter to Public Utility Executives

BY ELIOT JONES
PROFESSOR OF ECONOMICS, STANFORD UNIVERSITY

In a notable address before the Missouri Association of Public Utilities, Mr. Philip Gadsden, vice president of the United Gas Improvement Company, has called the attention of the utilities to the necessity of bringing their policies "into complete harmony with the public interest." He offers three suggestions designed to meet current criticism of utility regulation and utility policy:

(1): That public service commissions be established in those states where there are no such bodies, and that the regulatory powers of all commissions be strengthened wherever necessary to give the commission jurisdiction over every factor that enters into the quality and cost of service;

(2): That public service commissions be given authority to pass upon the contractual relations between holding companies and their operating subsidiaries;

(3): That a principle for the valuation of utility properties be determined which will command the support of both the public and the owners of the properties.

In conclusion, Mr. Gadsden refers to the high professional standards of those who are charged with the responsibility of management and operation, and expresses the conviction that the operators of the properties, with a steadily growing sense of social responsibility, can be depended upon, with the support of an enlightened public opinion, to resist the exploitation of public utility enterprises, whether by politicians or by financial interests.

I approve of the suggestions of Mr. Gadsden, a critic from within the industry. It seems to me that they bespeak a desire to place public utility management on a higher plane, and to meet some of the leading criticisms of public utility regulation. As a friendly external critic of utility regulation perhaps it is not inappropriate for me to set forth, in the form of an open letter to public utility executives, my views as to the steps that should be taken to make regulation more effective, and to remove the legitimate grievances of the public, whether viewed as consumers or citizens.

—THE AUTHOR

THIS is truly a period in which established institutions and accepted methods of conducting enterprise are being subjected to critical analysis.

That in such a period as this the public utilities should come in for their share of criticism is to be expected. But such criticism, if it be made in a constructive spirit, should be welcomed rather than deprecated. It is in such a spirit that the author here sets forth his views as to the steps that should be taken to make regulation more effective, to remove the legitimate grievances of the public, whether viewed as consumers or citizens, and to bring the affairs of the public utilities "into complete harmony with the public interest."

FIRST: *The scope of commission control should be broadened. There should be a public service commission in every state—(there is none in Delaware)—and the commission should have authority over all public utilities.*

This would require considerable additional legislation; for in 1930 six of the forty-seven state commissions had no jurisdiction over electric light and power companies, seven had no jurisdiction over manufactured gas companies, and five none over natural gas companies.[1] Moreover, in a number of states the jurisdiction of the commission was limited in character.

The commission should not only have authority over all public utilities, but also over all the matters necessary to make regulation truly effective, including, of course, rates, service, accounts, certificates of public convenience and necessity, securities, and combinations. But in 1930 state commission regulation of electric light and power companies did not embrace rates and service in eight states, accounting in fifteen, certificates of public convenience and necessity in twenty, securities in twenty-four, and consolidations and mergers in twenty-seven.[2] In the same year the authority of the state commissions over manufactured gas companies did not extend to rates and service in nine states; to accounting in sixteen; to certificates of public convenience and necessity in twenty-two; to securities in twenty-four; and to consolidations and mergers in twenty-seven. Substantially the same situation prevails with respect to the regulation of natural gas companies.

Clearly, so long as these gaps in commission jurisdiction remain, it cannot honestly be maintained that regulation is effective.[3] To be sure, where regulation by state commission is absent there is sometimes local regulation, but it is well known that local regulation by itself will perforce prove quite inadequate.

SECOND: *The personnel of the commissions should be strengthened*

[1] See Bonbright and Company, A Survey of State Laws on Public Utility Commission Regulation in the United States, second edition (1930).

[2] *Ibid.*

[3] Upon this point note the remarks of Mr. F. P. Morgan, a member of the Alabama Public Service Commission: "Every person who is at all informed upon this subject knows that there is not adequate regulation of the public utilities in more than one fourth of the states of this Union." *Proceedings of the National Association of Railroad and Utilities Commissioners,* (1931) page 155.

so that they may be able to administer more effectively the functions entrusted to them.

There are several ways of accomplishing this result.

(A) Increase the salaries of the commissioners so that their position is made more attractive. In 1930 the salary of the commissioners (other than the chairman, who sometimes receives a higher salary than his colleagues) was $5,000 or less in thirty-one states, and $3,000 or less in seven states.[4] The situation was somewhat better in 1930 than in 1927 (when Bonbright and Company made its first survey of state laws on public utility commission regulation) because meanwhile salaries had increased and the cost of living had declined, but even in 1930 salaries were much too low in many states. And with an economy program sweeping the country it is, of course, to be anticipated that the salaries of commissioners, inadequate as they frequently are, will be further reduced.[5]

(B) Increase the tenure of office of the commissioners. In 1930 the tenure of office was four years or less in fourteen states, and as low as two years in three states.

(C) Increase the staff of the commissions, as well as their salaries.[6] An increase in staff will sometimes be necessary because of the enlarged duties of the commission, and even where no additional duties are imposed on the commission, a larger staff will often be desirable to ensure the efficient performance by the commissions of their present duties.

(D) Completely eliminate politics with respect to appointments[7] and reappointments and all phases of commission activity.

THIRD: *Federal regulation should be extended and improved. Federal regulation is necessary in order to make sure that there is no "twilight zone" within which the public utilities may escape regulation.*

[4] Bonbright Survey, second edition (1930).

[5] In 1928 Mr. Harvey Harmon, a member of the public service commission of Indiana, said that most commissioners "come into office with very little knowledge of utility problems and on account of the briefness of their tenure of office, many of them leave without much greater knowledge of these questions." PUBLIC UTILITIES FORTNIGHTLY, page 7, June 28, 1928.

[6] In 1928 Commissioner J. F. Shaughnessy, formerly president of the National Association of Railroad and Utilities Commissioners, said: "Better tenure of office, better appropriations, and better salaries for commissioners, department heads, and experts is imperative if this important branch of the public service is to be adequately nourished and public regulation is to be kept efficient. Generally speaking, it is at a low ebb today because of the neglect herein referred to." PUBLIC UTILITIES FORTNIGHTLY, April 5, 1928.

[7] In most states (27 in 1930) the commissioners are appointed rather than elected. In my opinion, appointment is the better way of choosing commissioners.

¶ "IT *is clear that if there is to be regulation of holding company securities, the Federal government must take an active part, especially in the case of holding companies with operating subsidiaries in more than one state.*"

The Supreme Court of the United States has held that "as to those subjects which require a general system or uniformity of regulation the power of Congress is exclusive." [8] There is thus a field of activity of public utilities—as several recent cases have clearly disclosed [9]—which is beyond the power of the state commissions to control. The Federal government should occupy this field, leaving to the states the regulation of intrastate commerce and also the regulation of that portion of the interstate commerce in utility products and services that is constitutionally within their power to control.[10]

Federal regulation is also necessary in order to deal with the holding company problem. There are three outstanding abuses connected with holding companies: (A) unreasonable service charges imposed on the operating subsidiaries; (B) uneconomic groupings of properties under holding company control; and (C) excessive issues of holding company securities. To what extent Federal regulation is required to deal with these matters, and what form the regulation should take, is difficult to say at this time, but some Federal regulation would appear to be necessary.

IT is often argued that the state commissions can deal with the problem of the service charge by refusing to recognize as legitimate operating expenses the fees paid to the controlling holding company to the extent that they are unreasonable. I have dealt elsewhere with this argument,[11] and have shown that the commissions have had difficulty in determining whether the fees are unreasonable because they have been denied access to the books of the holding company; even if they succeed in obtaining full access to the books, they may still be unable to determine what is a reasonable fee, because the state commissions cannot compel the holding companies to keep their books so as to supply the necessary information. The commissions have jurisdiction usually only over public utilities; and holding companies are not public utilities.[12] The state commissions are the proper bodies, in my judgment, to determine the reasonableness of the charges made for holding company services, but it is by no means certain that they have, or can be given, ample authority to deal with the matter. It seems desirable, therefore, that the Federal government proceed at once, to the limit of its authority, to enforce full publicity of the accounts of holding companies in accordance with a uniform system of accounting similar to that now prescribed for operating companies by the state commissions and the Interstate Commerce Commission. Such action, instead of being objectionable to the advocates of states' rights, should be acceptable to them, as it would enable the state commissions to regulate more effectively the utilities under their jurisdiction.

[8] 234 U. S. 317, 330 (1914).

[9] For example, South Covington & C. St. R. Co. *v.* Covington, 235 U. S. 537, P.U.R. 1915A, 231; Missouri ex rel. Barrett *v.* Kansas Nat. Gas Co., 265 U. S. 298, P.U.R.1924E, 78; Buck *v.* Kuykendall, 267 U. S. 307, P.U.R. 1925C, 483; and Rhode Island Pub. Utilities Commission *v.* Attleboro Steam & Electric Co., 273 U. S. 83, P.U.R.1927B, 348.

[10] On this topic, see Jones, Eliot, and Bigham, T. C., "Principles of Public Utilities," pages 642–661 (1931).

[11] "Principles of Public Utilities," pages 604–608, 615, 616 (1931).

[12] See Lilienthal, D. E., *Columbia Law Review*, 29, pages 408–412, April, 1929.

How the Personnel of the State Commissions Can Be Strengthened:

"(A) *Increase the salaries of the commissioners:*
(B) *Increase the tenure of office of the commissioners:*
(C) *Increase the staff of the commissioners:*
(D) *Completely eliminate politics . . . from all phases of commission activity.*"

So far as uneconomic groupings of utility properties are concerned, holding companies, free from state control, have acquired the stock of operating companies scattered throughout the country, and have frequently failed, partly because of competitive bidding by various holding companies, to work out the grouping of properties that would best conduce to the public interest.[13] Some states have endeavored to deal with this situation by the enactment of legislation providing that the purchase of the stock of a public utility company by a holding company (a nonutility company) must have the approval of the state commission, but there is much doubt as to the extent of the power that the state commissions can exercise over such acquisitions.

Over the issuance of securities by holding companies, especially foreign holding companies, the states are practically helpless. In a few instances the issuance of securities by a holding company requires the approval of the state commission if the securities constitute a lien upon utility property located within the state, but holding company securities seldom constitute such a lien, because they are based upon the stocks (and bonds) of the operating companies, and not upon their physical property. It is clear, therefore, that if there is to be regulation of holding company securities, the Federal government must take an active part, especially in the case of holding companies with operating subsidiaries in more than one state. Whether it is wise at this time to undertake the regulation of holding company securities is a matter upon which there is much difference of opinion, but I regard such regulation as desirable. A few years ago it was earnestly argued that there was no connection whatever between the capitalization of a holding company and the rates and service of its operating subsidiaries, but at the present time this contention is not being pressed with so much vigor. In fact, it has become obvious that the collapse of a great utility holding company has a very unfortunate effect upon the credit of the operating companies, so that the rate of return that is required to attract

[13] See Bonbright, J. C., and Means G. C., "The Holding Company," pages 154–159, 1932.

investors' funds is definitely higher.

FOURTH: *The valuation of utility properties should be placed on a more scientific basis.*

There is a general feeling that public utility rates are too high, because of the belief that they have been fixed so as "to yield returns on excessive and inflated property values." Mr. Gadsden expresses the opinion that the temporary advantages that the utilities have gained from the use of cost of reproduction as a basis of valuation in a period of high prices will be offset in a period of declining prices such as we are now experiencing; and he recommends the adoption of a principle of valuation that will eliminate this vexatious question from the field of public discussion. Some critics of the utilities will be disposed to turn a deaf ear to this suggestion, coming as it does in a period of low reproduction costs. They will feel that the consumers are now entitled to the benefit of such low rates as the "present value" principle apparently assures them. There is much merit in this position, but I do not subscribe to it. I have long believed that the utilities should receive only a fair return on the amount of money that they have prudently invested in the property, and that the rate base should not be changed merely because the cost of reproduction has changed.[14] If, at the present time, the cost of reproduction is comparatively low—doubtless lower in many cases than the prudent investment—there can be no assurance that this will continue to be the case when business conditions improve. It seems, therefore, the part of statesmanship to endeavor to reach an agreement on the vexatious question of the rate base, and to remove it, if possible, once and for all from the field of future controversy. How this is to be accomplished is by no means easy to say, but it seems desirable to have Congress and the state legislatures enact legislation providing that prudent investment shall constitute the rate base, in the hope that the Supreme Court, once the legislatures have definitely approved this basis of valuation, will hesitate to substitute its judgment for theirs. And even if the court declined to follow the legislatures in this particular, the prudent investment basis could still be employed, if, as in Massachusetts and California, the utilities accept this basis of valuation, and do not run to the courts for protection against it.

In other words, if the utilities are sincere in desiring to remove this vexatious question from the field of controversy, it can be done, the supreme court to the contrary notwithstanding.

FIFTH: *The fair rate of return should also be placed on a more definite basis.*

The rate of return is as important as the rate base in estimating the amount of money that investors in public utilities are entitled to receive, yet it has had only a fraction of the attention that has been devoted to the rate base. In my opinion, a fair rate of return is one which, under honest

[14] See "Principles of Public Utilities," Chapter 5 (1931).

accounting and responsible management, will attract the amount of investors' money needed for the development of public utility facilities; and I believe that the commissions, in designating the rate of return that is fair, should take fully into account the character of the utility's financial structure—the various classes of securities outstanding, and the legal and economic obligations of the company with respect to interest and dividends thereon. Space is not available to develop this point here,[15] nor the other points that would need to be discussed, such as improved commission and court procedure, were a complete program of regulation to be set forth; it must suffice to point out that there are many phases of utility regulation that admit of more scientific treatment, and that must have such treatment, if regulation is to be really effective.

IT is clear that the utilities can contribute in a most substantial way to the success of the regulatory program if they endeavor (in Mr. Gadsden's words) to bring their policies "into complete harmony with the public interest." I enumerate below some of the things that public utility companies or executives can do (or refrain from doing) to obtain the confidence and good will of the public, without which a permanent settlement of the public utility question cannot be achieved.

(A) Support (or at least do not oppose) the movement for the creation of a public service commission in every state, with jurisdiction over all public utilities and over all matters necessary to make regulation effective.

(B) Lend aid to all proposals designed to strengthen the personnel of the commissions, including increased salaries, longer tenure of office, more adequate staffs, and the complete exclusion of political and personal considerations in the choice of the commissioners and the staff.

(C) Use their influence to eliminate the abuses of the holding companies, and in many instances the holding companies themselves. Mr. Gadsden admits that holding companies have sometimes been used to exploit the operating subsidiaries, and through them the customers, and refers to such conduct as a "breach of trust."

(D) Honestly endeavor to remove the valuation question from the field of controversy. The public utilities should be satisfied with a fair return on the money prudently invested in the property, and should reduce the frequency of their appeals to the courts to obtain the *right* to charge rates higher than the traffic will bear. As Mr. Gadsden well says, "the guiding principle in rate making should be, not 'all that the traffic will bear,'

[15] I have discussed this topic at length in "Principles of Public Utilities," Chapter 6 (1931).

¶ *"IT seems desirable to have Congress and the state legislatures enact legislation providing that prudent investment shall constitute the rate base, in the hope that the Supreme Court, once the legislatures have definitely approved this basis of valuation, will hesitate to substitute its judgment for theirs."*

but how low can the rates be reduced to meet competition and to induce the largest possible use of our services."

(E) Favor thorough-going publicity of utility affairs. This should be done in recognition of the fact that the business of utility companies is affected with the public interest in such a vital way that the people are entitled to full information with regard to their operations.

(F) Employ sound principles of financing, even if regulation is lacking. I, of course, do not mean to suggest that all or even most operating companies have employed unsound methods of finance, but merely that unsound methods be eliminated, where they have occurred. The holding companies have been guilty of unsound financing to a much greater extent, of course, than the operating companies.

(G) Adopt a more enlightened public relations policy, with fewer attempts to influence the press, schools and colleges, women's clubs, and so forth.

(H) Keep out of politics altogether. Contributions to the campaign funds of political parties by utility executives and interests should, of course, be frowned upon.

(I) Cease their attacks on publicly owned works. Public ownership may or may not be expedient—it usually is not, in my judgment—but it is no part of the business of public utilities to endeavor to discredit municipal enterprises.

It will perhaps be noticed that no mention has been made of public utility service. This is because there is comparatively little cause for dissatisfaction on this score; utility service, generally speaking, has been high in quality. Were the showing of the utilities with respect to rates and finance as good as their showing with respect to service, the public relations of the utilities would give them practically no cause for concern.

I have pointed out at some length the duty of the utilities. But the regulating commissions and the public also have a clear duty: to keep always in mind the importance of dealing justly, and even liberally, with the utilities, to the end that those who have invested their money and their lives in the utility business may obtain equitable treatment, and the patrons may continue to enjoy a high quality of service. An "external critic" is, of course, more likely to be impressed by the shortcomings of the utilities than an "internal critic," but no doubt the utilities have suffered a great deal also, at the hands of politicians and irresponsible persons.

Would not some utility representative find it worth while to set forth, in the receptive columns of PUBLIC UTILITIES FORTNIGHTLY, the grievances of the utilities, and the steps that the public should take to meet the utilities half way in the endeavor to place utility policies and practices on the firm foundation of "complete harmony with the public interest?"

The Real Cost of Regulation to the Ratepayer

Is the customer paying more for utility services than he would be paying if the economic law of supply and demand were allowed to operate freely—without the benefit of commission suspension? Read the article by C. ELMER BOWN *in the coming number of this magazine, out November 10th.*

The Revolt against Radicalism

An economic crisis that is revealing the inadequacies of panaceas and nostrums and which is turning the English-speaking people toward conservative doctrines

In time of peril, the Anglo-Saxon tends to steady down and to meet the emergency with characteristic sanity and judgment. To support this contention, the author of the following article draws upon the records of history—even history of such recent date as the collapse of the Labor Government in England and the failure of the radical Lang *régime* in Australia. In view of the pending political struggle between the liberal and conservative elements in the United States and the importance of the outcome to industry in general and to the public utility industry in particular, this article has a peculiarly timely significance.
—EDITOR

BY LOTHROP STODDARD

THE radicals, like the poor, are always with us, but in troublous times they become more vociferously articulate.

The past three years strikingly exemplify this. Trading on popular bewilderment, apostles of radicalism have tirelessly preached their multifarious gospels. All the old panaceas have been trotted out, bedecked in up-to-date trappings. Currency inflation, official super-spending, confiscatory taxation, and, of course, government ownership of public utilities—such are the basic notions behind radical projects for the routing of General Depression and the forging of a new social order, at one and the same time.

This radical campaign has, on the surface at least, produced considerable effects. Not only have the radical-minded been heartened; business has been correspondingly perturbed, capital rendered more timid, and confidence shaken. Indeed, there has recently been a good deal of loose talk about an impending revolution.

Yet, paradoxical though it may appear, while things seemed to be going from bad to worse, signs were visible portending a popular swing towards sane conservatism. At the very time when price levels and stock-market quotations were plumbing their lowest depths, public opinion refused to be stampeded.

IN politics, certainly, there has been scant evidence that radical propaganda is making any notable headway. On the contrary, in certain instances, the voters have shown a distinctly conservative trend. Of this, the de-

feat of Senator Brookhart in the Iowa primaries and of Governor LaFollette in Wisconsin are outstanding examples.

Taking the country as a whole, the very gravity of our economic situation seems to be producing a sobering effect. Instead of rousing the American people to rash and ill-considered agitation, it appears to be making them sit down and think. In short, the average American, when confronted by a genuine crisis, does not fly off the handle. Far from turning radical, he tends to become conservative.

That, at any rate, is the conclusion to be deduced, not only from present-day happenings, but also from the evidence of history. It is equally true of England and of other English-speaking lands. We seem, therefore, to glimpse an abiding quality of hard-headed common sense which characterizes Anglo-Saxons and distinguishes them from most other peoples. Latins and Slavs certainly do not react in that way; they are both prone to seek salvation from major ills either in red revolution or in iron-handed dictatorship. The Anglo-Saxon, on the contrary, instinctively distrusts panaceas and has scant faith in short-cuts to the millennium. He prefers to arrive more slowly, but also more surely, by evolutionary changes, made piecemeal and usually clothed in the garb of constitutional procedure.

ENGLAND has had only one first-class revolution. That was the Puritan Revolution of almost three centuries ago. It was a real revolution, right enough; but a revolution kept strictly within bounds. Oliver Cromwell, its guiding spirit, was the most sober-minded of dictators. He and his associates knew precisely what they wanted and always kept the ultra-radical "lunatic fringe" from getting out of hand and forcing the pace. Yet, even so, the revolutionary method was so distasteful to British sensibilities that, after a couple of violent oscillations, England developed a truly marvelous technique for making needed changes by peaceful, evolutionary means. John Bull simply will not be driven too fast or too far. Indeed, even when persuaded that radical proposals have some degree of merit, John mistrusts the radical *method* and, therefore, puts conservatives in office to carry the radical program out!

The innate conservatism of the British people is strikingly illustrated by last year's general election, when the radical Laborites were swamped and a coalition government predominately conservative in political complexion was overwhelmingly voted in.

RECENT events in Australia likewise testify to the Anglo-Saxon's abiding common sense. That remote commonwealth of the British Empire had been indulging in a series of radical experiments, notably in government ownership of public utilities. The upshot was a mounting burden of debt which finally impaired the country's credit and threatened national bankruptcy. The radical Labor Party proposed to "solve" the difficulty by a defiant program of debt repudiation and currency inflation. But the Australian people, as a whole, would have none of this revolutionary procedure. A series of elections, state and national, broke the radicals' grip and installed governments pledged to

an honest facing of economic realities. Australia is today in safe hands. Its credit is substantially restored and its economic convalescence seems merely a matter of time.

OUR own national infancy, however, affords the most striking test to Anglo-Saxon conservatism and common sense. The American Revolution was not merely political; it was also an economic and social upheaval of the first magnitude. Prolonged and devastating, it had been not only a struggle against British rule but a bitter civil war as well. The defeated Loyalists fled or were expelled to the number of more than 100,000—an emigration as large, in proportion to the population, as the "White" exodus from Russia after the Bolshevik Revolution. Those Loyalist refugees included most of the old colonial governing class. The new rulers of America, though relatively conservative in temper, were faced by a strong radical opposition which desired to supplement the political by a social revolution.

And the radicals had much in their favor. In the first place, the Continental Congress was a mere shadow of a government. All the radicals had to do was to prevent the formation of a strong central authority, and they might hope to master the separate states piecemeal. The radical program was simple but effective—repudiation of debts, largely by currency inflation, and the establishment of a leveling agrarian democracy in which commerce and industry on a large scale would be next to impossible. What the radicals had in mind was soon dramatically shown by events in Massachusetts. The conservatives had enacted a state constitution providing for the payment of public debts, sound money, and due protection of private property. This infuriated the local radicals, who attempted to overthrow the conservative *régime* in a revolt known as Shay's Rebellion.

The revolt was crushed, but the warning was taken to heart. All the conservative leaders were deeply alarmed—none more so than Washington, who threw all the weight of his authority toward the speedy establishment of a strong central government resting on stable political institutions. The result was the prompt calling of a convention which drafted our Federal Constitution with its staunch bulwarks against rapid change and its strong safeguards of private property and individual enterprise. That the work of the Fathers was ably done, few will today deny. That it

¶ "THE *very gravity of our economic situation seems to be producing a sobering effect. Instead of rousing the American people to rash and ill-considered agitation, it appears to be making them sit down and think. In short, the average American, when confronted by a genuine crisis, does not fly off the handle. Far from turning radical, he tends to become conservative.*"

reflected the basic temper of the American people, time has abundantly proven. Yet we should not forget the difficulties under which the Fathers labored nor the strength of a radical opposition which might have committed America to quite other political and social courses.

THE story of the English and American Revolutions emphasizes the peculiarly Anglo-Saxon ability to stabilize even a violent change without letting the process run to still more violent extremes.

Contrast their outcome with those of the French and Russian Revolutions.

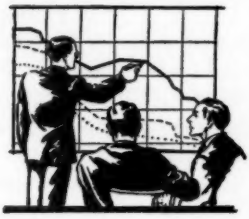
The first phase of the French Revolution was essentially a moderate overturn engineered by moderate-minded men. However, those moderate leaders were unable to hold their grip and were soon overwhelmed by a radical torrent which led to the Reign of Terror and barely escaped degenerating into downright anarchy. Similarly, the Russian czardom was overthrown in March, 1917, by a revolutionary movement under leaders whose goal was a liberal constitutional monarchy on the British model. Yet those first leaders quickly yielded to the Socialist Kerensky, and he in turn was overthrown before the year was out by the extreme Communists headed by Trotzky and Lenin. In both France and Russia, the revolutionary process, once set going, could not be stayed.

The stabilizing power of the Anglo-Saxon simply was not there.

This salient fact should always be kept in mind when diagnosing radical symptoms in America. Radicalism is not, as often believed, a recent foreign importation. Already present in colonial times, it has persisted throughout our history, coming to the fore whenever the times seemed out of joint and spirits of unrest stalked abroad.

HOWEVER, despite the influx of alien strains susceptible to radical propaganda, extreme radicalism has never yet really threatened the ascendancy of the traditional Anglo-Saxon ideals of individual initiative and long-headed common sense. Timid souls who today whisper their fears of an approaching revolution would do well to study American history. Probably the most serious challenge to our political and social order, subsequent to the Revolution, occurred nearly half a century ago, in the mid-'seventies, when our country was passing through a prolonged depression quite reminiscent to that of today.

Yet, what a difference between those two occasions! Then, the land was gripped by a series of great strikes, put down only after fierce fighting, much bloodshed, and wholesale destruction of property by furious mobs. On a lesser scale, the same was true of the next major depression in the early 'nineties, a couple of decades later. And those rebellious outbreaks were accompanied by even more widespread political heresies like that of the Populist movement, which polled a tremendous vote on a platform of the most radical nature. Not even our present-day Communists seem to have quite the punch of old-time demagogues like "Sockless Jerry" Simpson, while the "B. E. F." appears as a rather pale reflection of militant Coxey's army.



The Growing Demand Is for Curtailed Rather than Increased Government Activities and Expenditures

"THE outstanding feature of our current political scene is a vehement movement against governmental extravagance and inefficiency resulting in intolerable taxation. The popular trend is thus a demand for less rather than more governmental activity and interference. How, then, square this popular mood with the extension of officialism and greatly increased governmental expenditure which a radical policy toward public utilities would necessarily involve?"

WHAT most of us need is a bit more historical perspective. Let us remember that those radical upsurgings of former days were met and mastered by deep-going reserves of American thought, sentiment, and tradition which have always mobilized in the hour of need. It is true that the wholesale immigration of the past half-century has considerably modified the racial composition, and hence presumably the temperamental make-up, of the American people. That is really the unknown quantity in our present psychological situation. Yet nothing in current happenings should lead us to imagine that three years of business depression have caused the average American to scrap his basic ideas or transform his general outlook on life. They may have made him less optimistic and more critical, but they seem to have likewise rendered him more cautious and more determined to think things *through*. And that is not a mood in which either revolutions or rash legal innovations are ordinarily made.

THE relevance of all this to the public utility situation is as reassuring as it is obvious. Of course, our privately owned public utilities are today under heavy fire from all the radical batteries. "Progressives" echo Governor Pinchot's cry that "a monster is being created which if not subdued in its infancy will eventually crush the public with its might." Advocates of government ownership applaud Donald Richberg's dictum that "There must be a fight to destroy something clearly bad and create something clearly good." The lines are being sharply drawn on the public utility issue, and the joint debate will

undoubtedly wax even hotter in the near future.

Yet it is hard to believe that the American public will be induced to depart from the time-honored policy which is opposed to governmental conduct of business that can be satisfactorily carried on by private enterprise. Hard-headed Americans will certainly set off against radical arguments such sobering facts as our chronic postal deficits and the monumental failure of government operation of our railroads during the war-period. That venture in government management, though conducted for a relatively short time, seriously impaired plant, undermined employee morale, and accumulated an operating deficit of $1,600,000,000. Not a cheerful tale!

Matters like these *should* cure the average American of any hankerings after government operation or ownership of our vast network of public utilities. And, unless all the omens be at fault, they will do so; because the outstanding feature of our current political scene is a vehement movement against governmental extravagance and inefficiency resulting in intolerable taxation. The popular trend is thus a demand for less rather than more governmental activity and interference. How, then, square this popular mood with the extension of officialism and greatly increased governmental expenditure which a radical policy toward public utilities would necessarily involve?

The American public will thus presumably be disposed to endorse the penetrating analysis of the problem made by the late President Hadley of Yale in his address to the World Power Conference:

> "Industries are of two kinds—the 'standardized' and the 'progressive.' In the standardized type, of which the post office or municipal water supply are examples, a large part of the management is a matter of routine only. Honest administration and faithful performance of services are the all-important conditions. The capital invested is either small in proportion to the year's business, as in the post office, or subject to easily calculated depreciation charges as in the water supply. The necessity rarely arises for making radical changes of method to keep abreast of the times, or for scrapping the plant before it is worn out on account of new inventions which have rendered it obsolete.
>
> "In the progressive industries all these conditions are reversed. Success depends upon something more than the proper performance of routine duties. The amount of capital is large. Depreciation is an unknown factor. New inventions and new methods often render a plant obsolete long before it is worn out. . . . The history of state-owned industries in the nineteenth century shows that the government has been fairly successful with standardized industries, and habitually unsuccessful with progressive ones, such as the railroad and telephone, and that the difference is peculiarly marked where the administration is under the control of a legislative body."

That is both sound sense and good American doctrine. It is highly unlikely that the American people will subscribe to radical amendments thereto—certainly not in their tax-conscious mood in which it at present finds itself!

A Year of Innovations in State Regulation

In a series of three articles, published in this magazine under the title "Progressive Ventures in Commission Regulation" in the February 4th, 18th, and March 3rd numbers, Dr. Martin G. Glaeser *described the new regulatory laws passed in Wisconsin with the purpose of increasing the power and scope of the state commission and of making utility regulation more effective. In the coming issue of this magazine* Dr. Glaeser *appraises the record of the past year. Out November 10th.*

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

FLOYD W. PARSONS
Editor and economist.

"We have learned beyond any shadow of doubt that plants must be created to curb competition and regulate production."

MERLE THORPE
Editor and publicist.

"If all our activities were in the hands of the government there would be no competition, but there would be no progress and no opportunities."

SAMUEL O. DUNN
Editor "Railway Age."

"If a man were allowed to open a cigar store in a Federal post office building, what he paid for the privilege would not be a tax, but a rental. Our highways are just as much public property as a post office building."

NICHOLAS MURRAY BUTLER
President, Columbia University.

"If government is to be restricted to the sphere originally marked out for it by the framers of our Constitution, then we must so conduct ourselves that there is no temptation for government to increase its area of jurisdiction."

NORMAN THOMAS
Socialist candidate for the presidency.

"Must we deal with power and perhaps other forms of public ownership by further amendment to the Constitution, remembering that in the Eighteenth Amendment we have a precedent for rather ruthless confiscation, or destruction of private-property values?"

ED HOWE
Kansan philosopher.

"What is the lesson of the moment, the hour, the century, or of all time? I believe it is the dangerous and growing power of politicians, the press and radicals, all representing minorities, and the cowardice of the majority in refusing to enforce necessary decency."

JAMES M. BECK
U. S. Congressman from Pennsylvania.

"If the king in the Carroll classic (Alice in Wonderland) believed in finding a verdict first and then trying the accused afterwards, he merely imitates the Federal Trade Commission, which, after much costly investigation into some business enterprises and after reaching a conclusion as to the guilt of some unfortunate business man, then proceeds to formulate its own charges and tries the same as prosecutor, judge, jury, and lord-high-executioner."

An Effort at Federal Regulation That Has Failed

How the stockyard business is faring under the abortive attempt to control it by special legislation as an industry "clothed with public interest."

By K. LEE HYDER

THE Interstate Commerce Commission has been putting on such bizarre entertainment in the Big Top of the Federal Regulation Show that some of the lesser acts are suffering. Comparatively few of the regular patrons realize that a performance almost as amusing—if not as spectacular—is being offered simultaneously by another government bureau in a smaller tent, but right on the Midway. All of those who have happened in agree that this performance is good. The Ring Master is in fact no less a personage than a cabinet officer, the Secretary of Agriculture, and the *piece de resistance* at the moment consists of the efforts of his troupe to regulate the service rates and charges for handling and feeding livestock at the public stockyards.

There is some entertainment in this spectacle, and some elements of real drama—if not tragedy, at least to those of us who, as taxpayers, are subsidizing the show.

Let us see what's going on.

WE are all more or less familiar with the inherent weaknesses of some of the legislative offspring conceived and brought forth by a blundering Congress immediately following the World War. It was a hectic period. Patriotic fervor, while still recognized as a stable commodity, was losing its kick. We were aghast to learn that Big Business had been making money at the cost of our soldiers' lives. Profiteering was being put "on the spot"; and we had learned that the machine gun was a much more powerful engine of destruction than the old army rifle. Congress adopted it immediately as standard equipment.

Now, the so-called Big Five Packers [1] offered a splendid target. They

[1] Swift, Armour, Morris, Wilson, and Cudahy had come to be known as the "Big Five." Their importance in the packing industry is reflected in statistics showing a combined total of some 38 per cent of the entire annual livestock slaughter in the United States. (See Petitioner's "Exhibit 10"—Proceeding before the Supreme Court of the District of Columbia in the petition of the packers to modify the Packers Consent Decree.)

had prospered—and prospered greatly through the war. They had expanded their facilities and operations tremendously. Of course, the government had asked them to do it, but that was another story and not to be considered with the issues of the moment. It was inferred, from the latest report of the Federal Trade Commission,[2] that these packers closely resembled certain fat, underslung, cornfed animals which entered the packing houses in countless droves and came out again for general distribution in cans, boxes, and tubs, leaving nothing but their squeals behind. The livestock producer didn't have a chance. How could he? The packers not only controlled the prices of meat products to the ultimate consumer, but also the price of the animals on the hoof; and besides, they owned the yarding, watering, and feeding facilities at the great livestock markets and thereby took another large slice from the farmers' margin and cut this slice themselves.

There you have the stage set just as Congress saw it. The play had yet to be written and the cast selected.

THE preliminary skirmishing was not spectacular. The cedar chest was opened and the good old antitrust laws were again brought forth, musty from the years among the moth balls. The packers were ordered to sell their interests in the stockyards. It was to be as simple as that. And the then Attorney General Palmer modestly accepted due credit for the solution. In fact the packers agreed to this plan and other demands, and the Packers Consent Decree[3] resulted in 1920. Unfortunately no one wanted to buy the yards. No one outside the industry knew anything about stockyard operation — and besides, more money could be made in many other ways. So this plan under the Consent Decree was getting exactly nowhere. It did not even have the merits of a good fight. The packers were willing enough, but their stockyard interests simply could not be sold.

And that was that.

IN the meantime political fences under the new administration needed repairing, and in fact actual replacement of parts with new materials was more than desirable. So, to straighten out a bad situation and correct all evils at one time, Congress passed the Packers and Stockyards Act, approved August 15, 1921. This legislation (hereafter known as the Act) provided for a number of things concerning the conduct and operation of the packers, stockyards, and commission men, and involved all activities ordinarily carried on at a public livestock market. We are herein concerned chiefly with those sections of the Act which refer to stockyard services, and more particularly with those which relate to the regulation of

[2] This report resulted from an investigation of the meat packing industry ordered by the President on February 7, 1917. The issue was one of long standing, having had its inception in 1903 in a proceeding under the Antitrust Law (United States *v.* Swift & Co. [1903] 122 Fed. 529, and Swift & Co. *v.* United States [1905] 196 U. S. 375, 49 L. ed. 518). Later (1912) the same defendants were indicted, tried, and acquitted for such violation of the Antitrust Law. (See House Committee Hearings before Committee on Agriculture, 1920, Vol. 220-2, Subject: Meat Packer Legislation, 718.)

[3] Decree in the United States of America *v.* Swift and Company and Others, effective as of October 1, 1919.

stockyard service rates and charges. This Act vested with the Secretary of Agriculture the powers believed to be required for the enforcement of its provisions, and brought the stockyards into the category of a public utility under Federal regulation.

The plot was now completed and the principal part assigned.

Now, what rate changes or benefits has the Secretary accomplished through the administration of the Act? This is 1932, you know, and eleven long years have passed. He has classified and "posted" the stockyards; he has requested and obtained schedules of charges or tariffs specifying the services rendered and the prices obtained therefor; he has built up an organization of inspectors and engineers, lawyers, and examiners; he has prepared surveys, economic studies, and valuations; he has held many hearings, largely at his own recognizance; and, at the last accounting, he has caused an adjustment of rates in but two yards, one an upward and one a downward revision, and these at minor yards and effected largely by compromise.

The costs involved have been terrific. A typical investigation at one of the major markets has usually been dragged out for from one to three years at a cost of from $40,000 upward [4] to the stockyard company and no doubt at as much or more to the government. And now, after eleven years, the statutory 3-judge district courts, as provided in the Act, have just handed down the first two decisions in the Denver and St. Joseph cases [5] in which they upheld the stockyard companies as petitioners and granted permanent restraining orders against the new schedules of rates as imposed by the Secretary.

We are, therefore, right back where we started from. The court in the Denver Case (decided April 4, 1932) ruled that the cost of defending their position in the proceedings, amounting to $41,000, was a legitimate item of expense of operation of the stockyard company. Therefore, all of these costs must eventually be paid by the user of the service directly in his charges or indirectly in added taxation. There is no point in reviewing

[4] For example, testimony was offered by the secretary-treasurer of the Union Stock Yards Company of Omaha, Ltd., at the recent hearing in Omaha (Jan.-Feb., 1932) that his company had expended between $50,000 and $60,000 in preparing for and presenting its position.

[5] Denver Union Stock Yard Co. *v.* United States, 57 F. (2d) 735, P.U.R.1932C, 225; St. Joseph Stockyards Co. *v.* United States, 58 F. (2d) 290.

¶ "THAT *the public stockyards of the country are 'clothed with public interest' is obvious. . . . The stockyard companies do not deny this. On the contrary they admit it and realize the responsibility resting upon them. All they are asking is a proper interpretation of their position, and they welcome regulation if it can be administered with recognition to the problems peculiar to the industry and not blindly along the lines applicable to the true public utility.*"

the merits in the presentation of these cases at this time. That is another matter. We are primarily concerned with the contention that the Secretary was attempting to use tools unsuited to the job rather than with his degree of skill in the handling of them.

DURING this 11-year period we should add, in all justice, that we have had several secretaries of agriculture, each with different fundamental training and viewpoint. These men were, of course, political appointees and no doubt able enough; in any event no point to the contrary is made in this brief. Based upon a reasonably constant contact with the situation as it has developed through the years, it is firmly believed that the failure to date is not fundamentally a matter of personnel, but rather the impossibility of attempting to establish rates and charges solely upon the "fair return on fair value" doctrine, which has been the basis adopted by the government to date.

Let us assume for the moment that this is the only method so far conceived by which the limitations of what is or is not "confiscation" may be determined. It does not necessarily follow that what constitutes fair rates and charges shall be the exact result of the application of this formula. Fair enough, perhaps, in the case of a true public utility operating under franchise and of a monopolistic character, but hardly controlling in a competitive industrial enterprise. This distinction was recognized many years ago in the Cotting Case (Cotting *v.* Kansas City Stock Yards Co. [1901] 183 U. S. 79, 46 L. ed. 92) in which Mr. Justice Brewer said:

> "If under such circumstances he is bound by all the conditions of ordinary mercantile transactions he may justly claim some of the privileges which attach to those engaged in such transactions . . . pursuing this thought, we add that the state's regulation of his charges is not to be measured by the aggregate of his profits, determined by the volume of business, but by the question whether any particular charge to an individual dealing with him is, considering the service rendered, an unreasonable exaction. In other words, if he had a thousand transactions a day, and his charges in each are but a reasonable compensation for the benefit received by the party dealing with him, such charges do not become unreasonable because, by reason of the multitude, the aggregate of his profits is large."

THE efforts being expended in attempting to fix the fair values and the fair returns thereon are, of course, providing the current features of the show. In many respects it is obviously an amateur performance—but you have to hand it to the actors for trying. The ridiculous rules and untenable principles of valuation expounded and applied by the Interstate Commerce Commission were discarded practically from the start. The procedure in public utility valuation, as recognized by the courts, has been adopted in principle. Value has been searched for as of the date of inquiry, and costs have been developed for the particular property rather than throwing them all in a hat for a blindfold selection thereafter. Errors have been chiefly those of fact and conclusion—resulting perhaps from an unfamiliarity with the task.

That the public stockyards of the country are "clothed with public interest" is obvious. But it is no more "clothed with public interest" in the popular sense, than are many other industries furnishing service to commerce, such as commission houses, which provide space and handle com-

How Can the Stockyard Come within the Jurisdiction of the Interstate Commerce Laws?

"THE recapture clause in the Transportation Act was a new effort at control of the profits of public utilities of a nonmonopolistic character by the Federal government. Since it has failed, what possible chance is there in the case of the stockyard where the business is of a still more competitive character and where its inclusion within the category of interstate commerce is at best a technical and not a natural interpretation?"

modities as one step of their progress from producer to consumer. Statistics compiled and published by the bureau of agricultural economics of the Department of Agriculture show the estimated number of animals slaughtered in the United States for the year 1900 to be about 75,000,000. In 1931 this had increased to 115,000,000, a gain of 53 per cent. Of this number about 65 per cent, or 75,000,000, were slaughtered under Federal inspection. For the same year the reports of the eight largest markets showed combined receipts of over 50,000,000 head; that is, perhaps two thirds of all the animals slaughtered (under Federal inspection) passed through the eight largest stockyards.

Yes, indeed, the business is clothed with public interest! The stockyard companies do not deny this. On the contrary they admit it and realize the responsibility resting upon them. All they are asking is a proper interpretation of their position, and they welcome regulation if it can be administered with recognition to the problems peculiar to the industry and not blindly along the lines applicable to the true public utility.

In one sense the stockyard has been likened to a hotel for livestock, conducted on the European plan; in other words, the stockyard provides pens for cattle, hogs, sheep, horses, and mules, with proper accessibility just as a hotel provides a room and accessory equipment with access thereto for the human being. A veterinary, immunization plants, and so on are available just as a house physician and medical services are available in a hotel. Food and water for livestock are provided just as such necessities are available to the guest at the hotel. Sanitation, and in fact almost every other comparison, can be made as between the stockyard and the hotel.

The stockyard business, however, is more than that. Primarily a "market" is provided; that is, a buying power—which is a definite but more or less intangible thing—exists at every successful public stockyard and is the most important single service available to the shipper or purchaser of livestock.

Now, what is this stockyard business?

THE stockyard company, as one of the services which it renders to its patrons, must be ready for each shipment and, when received, have available the necessary labor to unload it from the car to pens provided for such purpose. This unloading cost is billed to the railroad and is a part of interstate transportation. It is not included in the category of stockyard service under consideration herein, but is handled by the stockyard company simply as a convenience to the railroad and undoubtedly at a saving in cost. From that time on the stockyard company is not in any way responsible for or concerned with what becomes of the livestock comprising the shipment except to yard it, see that it is properly fed, watered, and bedded, and that proper facilities are provided for its display to prospective purchasers.

The commission merchant ultimately offers and sells the stock; notifies the stockyard, who in turn weighs the animals and then delivers them to the purchaser either at a local packing plant or to the car or truck for reshipment elsewhere. Assuming that they are sent to the packing plant for slaughter, all operations thereafter are handled by the packer and the final products and by-products are sold by him to the ultimate consumer, and probably distributed again by interstate transportation.

Now, wherein can the service rendered by the stockyard through any logical reasoning be considered as in interstate commerce? As a matter of fact, the stockyard is primarily a personal service organization.

The stockyard is not in any way a public utility in the real sense of the word. A true public utility has been the recipient from the hands of the state of certain prerogatives, such as the power of eminent domain. No monopolistic grant or privilege is given by the state to the stockyard. Government regulation—so-called—has been superimposed upon it and the factors normally justifying such action are not inherent in the business. The stockyard is definitely a competitive industry and the rates and charges must logically be regulated primarily by economic laws. There are not very many major markets in the country, and one of the great advantages to the shipper is the centralization of buying power. The stockyards at Kansas City, St. Joseph, Omaha, and Sioux City are just as close to each other and just as interlocking in competition as four grocery stores would be operating at the various corners of two intersecting streets.

Stockyard executives, who have spent a lifetime in the business, have expressed the opinion that a few cents' difference in the tariff for any certain service as between competing yards might not have an important influence upon the volume of business done. They know that, after all, the shipper is not so much concerned with the relatively minor or nominal percentage of cost that the stockyard charge represents in any shipment, as he is with the sale of his stock at the best price in the shortest space of time, and, therefore, the market is what he is inclined to pay for.

However, as a matter of principle —all things being equal—the shipper can elect and will elect to ship his stock to any one of these markets, and if he can get every other advan-

tage, together with a less yardage charge at a certain stockyard, naturally he will ship to that particular market.

It is noted, moreover, that this question must be causing the Secretary no end of trouble. To date he has avoided the issue by specifying identical rates in new schedules at obviously competing yards. Considering the basic differences in respective properties, it seems a most remarkable series of coincidences that the same rates would result from the entirely independent fixing of the rate bases and the fair returns thereon. Can this really be ascribed to coincidence, or is each valuation simply the container cut to fit the size of the order? The variance in the rates of return adopted as fair for different markets could hardly be explained upon any other assumption. There is no logical difference in the character of the business or its underlying risk. All the yards depend upon the same basic source of supply. Why, then, should the rates of return vary?

The only possible answer, of course, is that the government wants the rates lowered, but hesitates to disturb the economic balance automatically set up over the years at the various markets. Perhaps a change would not work any injury to the livestock industry as a whole, but it is too big a gamble at present; therefore, this wasteful expenditure of the taxpayer's money in useless labor is permitted simply as a camouflaged support for what is at best an unsound structure.

If the show is to go on, why not install some real guy wires to hold up the tent?

The cost of stockyard service to the shipper is nominal. For example, the cost to the producer for all of the service and facilities furnished by the Denver Union Stockyards Company in 1929 was reported to be 1.09 per cent of the gross selling price received by him for his livestock, and this percentage included the cost of feed and bedding. What would any producer or manufacturer of any general commodity think if he were able to ship his product to a certain central sales bureau and know that when it got there he could be sure of selling it at the best price, and that the cost of the insurance for the sale would be approximately one per cent of the price he obtained?

Furthermore, the figures [6] developed at Denver prior to the very re-

[6] Figures were for the year 1928, the last year before the hearing, for which the statistics were available.

¶ "A TRUE *public utility has been the recipient from the hands of the state of certain prerogatives, such as the power of eminent domain. No monopolistic grant or privilege is given by the state to the stockyard. Government regulation—so-called—has been superimposed upon it and the factors normally justifying such action are not inherent in the business.*"

cent decline in livestock prices, showed that two cents out of the producer's sales dollar covered all stockyard service including yardage, feed and bedding, railroad back charges, switching charges—where additional to the freight rate, loading and unloading charges, insurance premiums, and all other charges of every sort and nature excepting actual freight. Are these charges, after all, a matter of serious moment to the shipper? Any possible reduction would be wholly negligible to him.

In discussing these figures in his brief in the Denver Case, counsel calls attention to the language of Mr. Justice Brewer in the Cotting Case:

> ". . . cannot but be impressed with the fact that the smallness of the charge suggests no extortion."

THE fallacy of attempting to regulate the rates and charges of a public stockyard upon the basis of "fair return upon fair value" was very clearly recognized by former Secretary of Agriculture Jardine in his decision in the St. Paul Union Stockyards inquiry.[7] The Secretary gave a forceful discussion on the actual merit or otherwise of the method being pursued in the various investigations. He drew the real picture in showing that a stockyard, which is frequently located upon reasonably priced land at the outskirts of a city, might be making a very favorable return upon the fair value of its property and paying dividends considerably greater than actually necessary to maintain credit; whereas a stockyard (such as that of Chicago) hemmed in by the most highly developed industrial district in the United States, occupies land of such value as to prohibit anything resembling a fair return upon the land itself—to say nothing of the investment in the improvements.

He says in part:

> "If, under these circumstances, the rates are to be regarded as unreasonable and unlawful because they yield more than a given percentage of net return upon the 'fair value' of respondent's property, it must be for the reason that the Packers and Stockyards Act, 1921, treats financial success, no matter how obtained, as an evil and seeks to prevent it. I do not so understand the Act. Such a method . . . does not seem to me to be the correct way of ascertaining the reasonableness of rates now in force or of establishing new and reasonable ones."

And further:

> "There will exist simultaneously at the various comparable yards schedules of rates prescribed by the Secretary of Agriculture as reasonable which will vary materially in altitude without any reason for such variance other than circumstances which have little, if any, connection with the service rendered or the real cost of rendering it."

Such a situation could not exist in the case of a water company, an electric light company, or any of our other more or less monopolistic utilities. These usually operate under franchise and their business is generally restricted to certain localities; and all within the community—if they use the service—must buy from the utility.

TO some extent the railroads are competitive, but, after all, they do operate in interstate commerce; are basically different in every way from the stockyards, and are, therefore, subject to their own particular problems. However, even in the case of the railroads it is increasingly evident that the Interstate Commerce Com-

[7] St. Paul Union Stockyards Co. Docket 116, before the Secretary of Agriculture, Packers and Stockyards Administration.

tage, together with a less yardage charge at a certain stockyard, naturally he will ship to that particular market.

It is noted, moreover, that this question must be causing the Secretary no end of trouble. To date he has avoided the issue by specifying identical rates in new schedules at obviously competing yards. Considering the basic differences in respective properties, it seems a most remarkable series of coincidences that the same rates would result from the entirely independent fixing of the rate bases and the fair returns thereon. Can this really be ascribed to coincidence, or is each valuation simply the container cut to fit the size of the order? The variance in the rates of return adopted as fair for different markets could hardly be explained upon any other assumption. There is no logical difference in the character of the business or its underlying risk. All the yards depend upon the same basic source of supply. Why, then, should the rates of return vary?

The only possible answer, of course, is that the government wants the rates lowered, but hesitates to disturb the economic balance automatically set up over the years at the various markets. Perhaps a change would not work any injury to the livestock industry as a whole, but it is too big a gamble at present; therefore, this wasteful expenditure of the taxpayer's money in useless labor is permitted simply as a camouflaged support for what is at best an unsound structure.

If the show is to go on, why not install some real guy wires to hold up the tent?

The cost of stockyard service to the shipper is nominal. For example, the cost to the producer for all of the service and facilities furnished by the Denver Union Stockyards Company in 1929 was reported to be 1.09 per cent of the gross selling price received by him for his livestock, and this percentage included the cost of feed and bedding. What would any producer or manufacturer of any general commodity think if he were able to ship his product to a certain central sales bureau and know that when it got there he could be sure of selling it at the best price, and that the cost of the insurance for the sale would be approximately one per cent of the price he obtained?

Furthermore, the figures[6] developed at Denver prior to the very re-

[6] Figures were for the year 1928, the last year before the hearing, for which the statistics were available.

¶ "A TRUE *public utility has been the recipient from the hands of the state of certain prerogatives, such as the power of eminent domain. No monopolistic grant or privilege is given by the state to the stockyard. Government regulation—so-called—has been superimposed upon it and the factors normally justifying such action are not inherent in the business.*"

cent decline in livestock prices, showed that two cents out of the producer's sales dollar covered all stockyard service including yardage, feed and bedding, railroad back charges, switching charges—where additional to the freight rate, loading and unloading charges, insurance premiums, and all other charges of every sort and nature excepting actual freight. Are these charges, after all, a matter of serious moment to the shipper? Any possible reduction would be wholly negligible to him.

In discussing these figures in his brief in the Denver Case, counsel calls attention to the language of Mr. Justice Brewer in the Cotting Case:

> ". . . cannot but be impressed with the fact that the smallness of the charge suggests no extortion."

THE fallacy of attempting to regulate the rates and charges of a public stockyard upon the basis of "fair return upon fair value" was very clearly recognized by former Secretary of Agriculture Jardine in his decision in the St. Paul Union Stockyards inquiry.[7] The Secretary gave a forceful discussion on the actual merit or otherwise of the method being pursued in the various investigations. He drew the real picture in showing that a stockyard, which is frequently located upon reasonably priced land at the outskirts of a city, might be making a very favorable return upon the fair value of its property and paying dividends considerably greater than actually necessary to maintain credit; whereas a stockyard (such as that of Chicago) hemmed in by the most highly developed industrial district in the United States, occupies land of such value as to prohibit anything resembling a fair return upon the land itself—to say nothing of the investment in the improvements.

He says in part:

> "If, under these circumstances, the rates are to be regarded as unreasonable and unlawful because they yield more than a given percentage of net return upon the 'fair value' of respondent's property, it must be for the reason that the Packers and Stockyards Act, 1921, treats financial success, no matter how obtained, as an evil and seeks to prevent it. I do not so understand the Act. Such a method . . . does not seem to me to be the correct way of ascertaining the reasonableness of rates now in force or of establishing new and reasonable ones."

And further:

> "There will exist simultaneously at the various comparable yards schedules of rates prescribed by the Secretary of Agriculture as reasonable which will vary materially in altitude without any reason for such variance other than circumstances which have little, if any, connection with the service rendered or the real cost of rendering it."

Such a situation could not exist in the case of a water company, an electric light company, or any of our other more or less monopolistic utilities. These usually operate under franchise and their business is generally restricted to certain localities; and all within the community—if they use the service—must buy from the utility.

TO some extent the railroads are competitive, but, after all, they do operate in interstate commerce; are basically different in every way from the stockyards, and are, therefore, subject to their own particular problems. However, even in the case of the railroads it is increasingly evident that the Interstate Commerce Com-

[7] St. Paul Union Stockyards Co. Docket 116, before the Secretary of Agriculture, Packers and Stockyards Administration.

Rates Based on "Fair Return on Fair Value" Do Not Apply to Competitive Industries

"THE failure to date (of the Packers and Stockyards Act) is not fundamentally a matter of personnel, but rather the impossibility of attempting to establish rates and charges solely upon the 'fair return on fair value' doctrine, which has been the basis adopted by the government to date. . . . Fair enough, perhaps, in the case of a true public utility operating under franchise and of a monopolistic character, but hardly controlling in a competitive industrial enterprise."

mission is about to abandon any effort to recapture earnings of the more profitable carriers.

In any event the Interstate Commerce Commission did not, even from the beginning, consider that the railroad rates could be regulated upon the "fair value—fair return" basis. Senator La Follette and his associates might have had such an hallucination at the time the Senator successfully propounded the valuation legislation, but any ideas of this kind were short-lived. The rate structure of the railroads has been a constant compromise and it is the result, not of a single comprehensive plan thought out in a moment, but rather of the cumulative experience of sixty years or more. The recapture clause in the Transportation Act was a new effort at control of the profits of public utilities of a nonmonopolistic character by the Federal government. Since it has failed, what possible chance is there in the case of the stockyard where the business is of a still more competitive character and where its inclusion within the category of interstate commerce is at best a technical and not a natural interpretation?

IN the case of Stafford *v.* Wallace ([1922] 258 U. S. 495, 66 L. ed. 735) the opinion of the Supreme Court, as delivered by Chief Justice Taft, was clearly stressing the position of those actively dealing in livestock at the markets, and the stockyard service was introduced more by virtue of the location of such activities than upon any particular analysis of the functions performed. Certainly the court made no attempt to instruct the Secretary as to the manner in which he should perform his duties. The proper interpretation of the stockyard's position in livestock commerce is still strictly a discretionary matter within the power of the Secretary,—he is still the director of the troupe.

THE revenue of the stockyard company may be considered as derived from three sources: *Yardage charges*—representing the use of facilities, together with the personal serv-

ice of the employees of the stockyard company in the holding, handling, watering, cleaning, weighing, etc., of the livestock: *Sale of feed and bedding*—as a commodity which is first bought in the open market, stored in barns or piles, and distributed by the stockyard's labor to the stock at the market price plus a fixed percentage of overhead and profit;[8] and the *Privilege of the market*—as provided in every tariff of any of the large stockyards in its yardage rates as one item for which such charge is made.

Apparently one of the most important points overlooked by the Secretary in his rate investigations and resulting orders has been the value of the market privilege.

THE building of this market represents an enormous investment on the part of the various stockyard companies which is not reflected on the books of account. The evidence presented at many of the hearings has shown that millions of dollars have gone into bringing in packers and providing a demand where the stock can be turned over immediately at definite prices established in competitive buying. In the earlier investigations going value was eliminated from specific consideration apparently following Interstate Commerce Commission precedent. This position, however, has now been abandoned and going value is being included by the Secretary in his valuations. True, the allowances have been upon a purely arbitrary basis of measurement, but regardless of the method adopted, the Secretary appears to take the position that some allowance should be made. However, going value is treated in every instance just as it is in all other utilities.

The great difference in the stockyard's investment has apparently not yet been recognized; namely, that there is another element of value to be incorporated before any consideration could be given to the business itself. In a broad way, perhaps, the market privilege granted to the user of the service is an intangible asset that might be included with other intangible assets possessed by the stockyard company, but it must be included, either as a part of the rate base, or recognized in the final setup of the actual schedule of rates. We are starting to open up virgin land and the Department of Agriculture should be the first to realize that special tools must be designed for the process.

THE stockyard is, after all, largely a product of the West, and it is one of the few institutions that we have today which still functions principally along the line of the "Golden Rule"—where the spoken word is even more powerful than the written contract.

Whether or not this condition can be maintained under regulation is problematical, but the stockyard's executives are not accustomed to the treatment being accorded them under the Packers and Stockyards Act and do not know how to meet it. Perhaps later generations will have learned their lesson and the stockyard of the future may be more comparable in its relations with the public to the present regulated utility. Let us hope not.

[8] The charges for feed are subject to frequent changes through the issuance of supplementary tariff schedules based upon the rise and fall of the market price for hay and grain.

A Year of Street Railway Regulation

PART II

What the commissions and the courts have done to control the competition of the busses and the taxicabs which are invading the field of the electric carriers.

BY ELLSWORTH NICHOLS

THE contract carrier has been the bane of common carriers under regulation. The regulated companies are required to uphold certain standards. They must operate regularly, and they must charge reasonable rates. Usually no such restrictions are placed upon the contract carrier, but often they operate so extensively that serious inroads are made into the business of the regulated carrier.

This condition has been met by statutes in some states, part of which have been sustained by the courts, while others have been held unconstitutional on the ground that the state has attempted to regulate a business which is private rather than public in character. In some instances so-called contract carriers have been regulated by commissions where the circumstances seem to justify a conclusion that, although they did not hold themselves out to the entire public, their operations were so regular that they were actually common carriers.

THE Texas legislature attempted to regulate these contract carriers to a limited extent. It required certificates of convenience and necessity for the operation of common carriers and permits for the operation of contract carriers. A Federal district court upheld this statute in an exhaustive opinion discussing the question involved. In substance the court said that contract carriers, although not affected with a "public use" in the sense that they were public utilities, were nevertheless carrying on such an extensive business over the state highways that this business was affected with a public interest, warranting a

certain amount of regulation. The point was stressed that the state was not attempting to regulate business, but was attempting to regulate highway traffic.[18]

THE Montana commission in a somewhat similar decision under a statute providing for limited regulation of private or contract carriers announced at the outset that it had no power to declare a legislative act unconstitutional, but it then went on to discuss the distinction between regulation of common carriers on the highways and considering the question of public convenience and necessity on an application for a certificate permitting operation by a contract carrier. The Montana commission declared that the purpose of the statute was not to regulate the business of common carriers, but to regulate the use of the highways.[19]

A Federal district court has recently sustained the constitutionality of certain sections of the Missouri statutes regulating contract motor carriers. The court also upheld exemptions in favor of carriers of farm and dairy products, carriers of newspapers, school busses, small vehicles, and mail carriers.[20]

IN Illinois the question arose whether so-called "service cars" which competed with a street railway were public utility carriers which must secure certificates before they could operate legally. Complaint against the service cars was made by a street railway and bus company which objected particularly to the practice of the service car operators of driving along the regular route and stopping just ahead of the street cars or busses. The commerce commission concluded that such operations were the operations of a public utility, and since the operators had not secured certificates of convenience and necessity, their actions were illegal and in defiance of the law.[21]

The practice of taxicab operators in soliciting passengers at so-called flat rates for transportation to ball parks, boxing arenas, and other specified points, notwithstanding the fact that their tariff schedules on file with the commission provided that all charges should be computed as shown by taximeters, was held to have violated the Public Service Company Law making it unlawful for any public service utility to charge rates for service different from those shown by its lawfully filed tariffs.[22]

THE District of Columbia commission is one of those which has taken definite action in regulating taxicabs, which with their present comparatively low charges, and in some places what may be termed cutthroat practices, have become a vital factor in the life of the street railway. This commission held that zone rates for taxicab service in the city of Washington were unsuitable and discriminatory because of failure of drivers to apply the rates uniformly,

[18] Stephenson *v.* Binford (1931) 53 F. (2d) 509, P.U.R.1932A, 1.
[19] *Re* Maynard Barney (Mont. 1931) P.U.R.1932A, 241.
[20] Schwartzman Service, Inc. *v.* Stahl (U. S. Dist. Ct.) July 26, 1932. See also Tidewater Lines, Inc. *v.* Parlett Coöperative, Inc. (Md. Cir. Ct.) August 9, 1932.
[21] East St. Louis R. Co. *v.* Illinois Commerce Commission (Ill.) P.U.R.1931E, 55.
[22] Yellow Cab Co. *v.* Farley (Pa.) P.U.R. 1931E, 334.

uncertainty as to zone boundaries, and the tendency to increase cruising and keep cabs in the congested traffic areas. The commission concluded that the only proper system was a meter rate.[23]

This order was sustained by the supreme court of the District, which held that taxicab operators are common carriers and public utilities within the jurisdiction of the commission, that the commission is authorized by act of Congress to prescribe exact rates for such service, and that the commission may fix such rates without making a valuation of the carriers' property.[24]

TAXICABS are common carriers and as such are subject to regulation by the commission as to rates, service, and general control, according to a decision by the Nebraska state commission in a case where regulations were adopted governing taxicab operations in the city of Omaha. The commission declared that the fact that taxicabs are regulated in only one municipality of the states does not deny equal protection of the laws where there is a real distinction between that particular city and other territories in the same state.

The Nebraska commission, like the District commission, held that it had authority to order the establishment of metered service in lieu of flat-rate zone fares for taxicabs. It was said that meters for measuring taxicab charges must be substituted for discriminatory flat-rate zone fares in order to check frauds which might otherwise be perpetrated upon passengers, and more accurately to measure the cost of actual service rendered. This commission, however, held that it was specifically prohibited by statute from fixing minimum rates.[25]

EVEN though a motor carrier is actually operating in competition with rail carriers, the extent of such operation and questions of expansion are still controlled by the commission. This was indicated in a decision by the Ohio commission in which an application by a motor truck operator for authority to increase its equipment 300 per cent was substantially modified. The evidence seemed to indicate that the requested expansion would make undue inroads upon the revenues of existing rail carriers, although a certain amount of expansion was

[23] *Re* Taxicab Fares (D. C. 1931) P.U.R. 1932A, 152.

[24] City Cab Corp. *v.* Patrick (D. C. Sup. Ct.) P.U.R.1932C, 1.

[25] *Re* Yellow Cab & Baggage Co. (Neb.) P.U.R.1932D, 121.

¶ "THE *court said that contract carriers, although not affected with a 'public use' in the sense that they were public utilities, were nevertheless carrying on such an extensive business over the state highways that this business was affected with a public interest, warranting a certain amount of regulation. The point was stressed that the state was not attempting to regulate business, but was attempting to regulate highway traffic.*"

warranted by reason of the abandonment of interurban rail service.[26] But it has been held that an express corporation is not required to obtain a certificate of convenience and necessity before installing pickup and delivery service.[27]

STREET railway companies, in an attempt to meet the constantly increasing competition by motor busses, frequently go into the bus business themselves—sometimes through subsidiaries and sometimes by direct operation of bus lines in connection with their street car lines. Their right to do this may depend upon the statutes and corporate charters in the state where they operate. In New York state it was ruled that a street railway company had no statutory authority to purchase busses, even though it intended to lease them to bus operating subsidiaries. Therefore, the commission denied an application of a street railway company for permission to issue securities, the proceeds from which were to be used to purchase bus equipment. The commission, however, indicated that under the public service law a street railway might have the power to purchase and operate busses after obtaining the requisite consent to substitute busses for cars.[28]

The companies, in some of the small cities particularly, find it necessary and advisable to abandon rail operations entirely and to substitute bus service. The commissions have often approved this procedure. The Indiana commission in authorizing the substitution of busses for street cars where the railway system was being operated at a loss and no reasonable increase in fare would have the effect of increasing the revenue but would only further diminish patronage, ruled that objections to the substitution of bus service for rail service on the ground that such operations would be more dangerous to the public in the time of sleet or snow up and down certain steep grades should not be given weight. It was said that automobiles operated within the municipality during all seasons of the year and that bus operations would even reduce hazards to passengers by loading and unloading at curbs.[29]

The same commission, in permitting abandonment in another case because of inadequate revenues, where evidence indicated that the utility's earnings had so diminished as to interfere with the proper maintenance of the system, thereby making further operation a menace to public safety, took judicial notice of the fact that a large majority of interurban and street railway properties in the country are failing to make a reasonable return and provide a sufficient amount for depreciation.[30]

THE Indiana commission, in authorizing abandonment of interurban lines, held that it had no statutory authority to limit, rescind, or revoke any franchises or permits except the operating licenses which it had itself granted. It held that once the company had lost its public utility

[26] *Re* Cleveland, C. & C. Motor Freight Co. (Ohio) P.U.R.1931E, 247.
[27] *Re* Harm (Cal. 1931) P.U.R.1932B, 216.
[28] *Re* Third Avenue R. Co. (N. Y.) P.U.R. 1931E, 243.
[29] *Re* Indiana Service Corp. (Ind.) P.U.R. 1931E, 274.
[30] *Re* Terre Haute, I. & E. Traction Co. (Ind.) P.U.R.1931E, 513.

"In New York state it was ruled that a street railway company had no statutory authority to purchase busses, even though it intended to lease them to bus operating subsidiaries. . . . The commission, however, indicated that under the public service law a street railway might have the power to purchase and operate busses after obtaining the requisite consent to substitute busses for cars."

status through the revocation of its operating certificate, the commission had no jurisdiction over the disposition of, or occupancy of, streets and highways by the company's tracks, poles, and other equipment. It was further held in this case that the operator of a railway service is not estopped from making application for authority to abandon such service by reason of the fact that it has applied for authority to furnish a transportation service by motor serving the same area.[31] This commission, in granting authority to discontinue unprofitable street car service, declared that it had no jurisdiction to cancel or annul a franchise and accept an indeterminate permit in return. The commission was of the opinion, nevertheless, that it had authority to grant permission for the discontinuance of street railway service notwithstanding the fact that the railway was operating under the franchise granted by the city. This would seem to indicate that the street railway company was required to obtain authority from the public utility commission and then might make what terms it would with the municipality.[32]

A street railway company which after years of sacrificing of adequate return, and notwithstanding able and efficient management, was unable to sustain sufficient patronage to pay bare operating expenses, was permitted by the Montana commission to abandon service upon its guarantee of appropriate withdrawal of equipment from city streets where substitute service by motor bus was available through the granting on the same day of a certificate to a responsible bus operator.[33]

THE Montana commission approved the abandonment of service in the city of Missoula over objections that authority should not be granted because the company was furnishing light, power, heat, and water service, and its earnings from the entire business might still be reasonable. The various utility services, however, were not being conducted under a uni-

[31] *Re* Indianapolis & S. E. R. Co. (Ind. 1931) P.U.R.1932B, 40.

[32] *Re* Indiana Railroad (Ind.) P.U.R.1931E, 425.

[33] *Re* Montana Power Co. (Mont. 1931) P.U.R.1932A, 504; *Re* Great Falls Bus Service (Mont. 1931) P.U.R.1932A, 507.

fied or consolidated franchise. The commission also ruled that the company was not obliged to continue unprofitable street railway operations until the expiration of its franchise, which was permissive and not contractual. The commission required the company to remove rails, ties, and other equipment, and to leave the highways in good condition and repair where service was stopped.[34]

In Nebraska a street railway which was found to have operated at a loss for a considerable period was permitted to abandon service, where evidence indicated that its schedule of fares necessary to yield a fair return on the value of the property would be higher than the traffic would bear and only serve to bring about greater losses.[35]

THE California commission authorized the discontinuance of interurban railway operations where traffic statistics showed that less than four passengers per trip were carried on a line 33 miles long in a thickly settled agricultural district connecting towns with a total population of over sixty thousand. The commission expressed the opinion that the measure of public necessity for utility service is not the resolutions by civic bodies or the testimony of witnesses who do not patronize the service, but rather the amount of actual revenue patronage.[36]

THE application of a street railway company to discontinue bus service because of alleged losses resulting from cut-rate taxicab operation was denied by the Wisconsin commission where the municipality and carrier had entered into an agreement, pending the proceeding, for continued curtailed operation during a period of one year. While there is nothing unusual in the ruling by the commission, this case is of particular interest as indicating that even the busses, which in their time were destructively competitive with street cars, are now in turn meeting severe competition by taxicabs.[37]

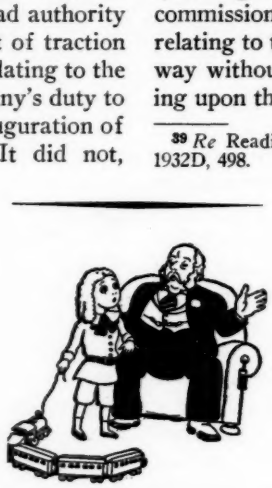
REPAVING programs by cities may be the immediate cause for abandonment of street railway service which has not been profitable. Thus the Connecticut commission granted an electric railway authority to abandon rail service over a city route and to substitute bus service where a contemplated repaving program by the city would require unwarranted expenditures for the continuation of the traction service. In this case the railway was permitted to retain its franchise rates over the route, but was ordered after removing rails, poles, and other structures at its own expense, to fill in holes left in unpaved highway by the removal of such structures with surfacing similar to the surrounding area.[38]

THE Pennsylvania commission held that it need not determine whether an obligation is imposed either by law or by franchise agree-

[34] *Re* Montana Power Co. (Mont.) P.U.R. 1932B, 275.
[35] *Re* Omaha & Southern R. Co. (Neb.) P.U.R.1931E, 366. See also *Re* Indiana R. Co. (Ind.) No. 10857, June 24, 1932.
[36] *Re* Tidewater S. R. Co. (Cal.) P.U.R. 1932D, 469.
[37] *Re* Menominee & Marinette Light & Traction Co. (Wis.) BC-49, July 21, 1932.
[38] *Re* Connecticut Co. (Conn.) P.U.R. 1931D, 444. See also *Re* St. Louis Pub. Service Co. (Mo.) P.U.R.1932D, 472.

ment upon a street railway company to repave the highway over an abandoned track bed since such an obligation would be enforceable only in the law courts. The commission, however, held that it must determine to what extent jurisdiction over such a matter had been specifically conferred upon it by statute. In this case the commission held that it had authority to authorize abandonment of traction service upon conditions relating to the performance of the company's duty to the public, such as the inauguration of substitute bus service. It did not, however, have power to impose conditions which would not directly affect public service, such as the requirement of repaving over the abandoned track bed to conform with the remainder of the highway.[39] This latter ruling is in conflict with several decisions by other commissions; or, more accurately, it might be stated that several other commissions have attached conditions relating to the restoration of the highway without making any specific ruling upon their power to do so.

[39] *Re* Reading Street R. Co. (Pa.) P.U.R. 1932D, 498.



Believe It or Not, But—

THE last horse-car line in New York was discontinued August 1, 1917.

* *

THE building of canals by man dates back to 1380 B. C., in the reign of Seti I of Egypt.

* *

IN answer to a recent questionnaire, American architects voted they preferred gas for house heating above other fuels.

* *

BUSSES and trucks injure more than five times as many people than accidents at railroad crossings, and cause more than twice as many deaths.

* *

AN experimental double-decked passenger coach, seating 120 passengers instead of the customary 76, has been put into service by an eastern railroad.

* *

THE tiniest steam locomotive in the world has been built by W. E. Garrison, a jeweler; it weighs seven ounces, operates with alcohol as a fuel, and can run 100 feet.

* *

EXPERIMENTS are being made off the Massachusetts coast, by the New England Telephone Company, with a ship-to-shore radio-telephone service to coast-wise vessels that will include fishing boats and small pleasure craft

What Others Think

How the Depression Has Tempered Opinions on the "Reproduction Cost" Valuation Theory

As early as the summer of 1929 (which was some months before the real bite of the depression) appeared articles in various periodicals (including PUBLIC UTILITIES FORTNIGHTLY) noting the sharp downward trend in prices of commodities used in utility property construction. It is well known now, of course, that it was the skyrocketing of these same commodity price lines during and shortly before the war period which caused the utilities and the ratepayers to change sides completely on the historical *impasse* of regulation: original cost versus reproduction cost.

In 1898, when the Smyth *v.* Ames Case, 169 U. S. 466, 42 L. ed. 819, was decided and when the late William Jennings Bryan represented the ratepayers in the Supreme Court against the railroad interests, it was the people—or, more properly, the ratepayers—who wanted reproduction cost as a necessary element of rate valuations. Many of William Jennings Bryan's most convincing arguments in form of "present fair value" have been used with telling effect for a cause, which Bryan lived to see prosper, by merely playing the game by rules which he laid down.

Even the most optimistic, or pessimistic, depending on one's point of view, never expected to see commodity prices hit an 1898 level or anywhere near it. United States Circuit Court Judge Stone said in 1919:[1]

> "No one can say what degree of depression may ultimately come, but it is reasonably certain that the cost of the properties now under consideration will never again approximate figures prevailing in the years before the World War."

That was in 1919. In 1922 the Supreme Court[2] spoke of a "new plateau" of prices. It seemed to assume that the price level results of the Great War had established a "new normality" and that the level following 1921 was to be comparatively permanent. We now know the error of this position and we may even doubt whether commodity prices will stay so far above the 1898 level as to make the reproduction cost theory of valuation more advantageous to the utilities than original cost.

WHAT will be the result of such price declines if utilities are to be valued by the reproduction cost theory?

Will the utilities and their patrons swap sides again and start the fight all over again with the original line-up? Or will the Supreme Court, chagrined by its manifest failure as a price prognosticator, seek a more constant valuation criterion?

These are the questions which Professor C. Woody Thompson attempts to answer in the August issue of the *Journal of Land & Public Utility Economics*. On the effect of a rigid adherence to reproduction cost in the face of continuously falling commodity prices on various utilities, Professor Woody states:

> "The utility which would be the hardest hit by the use of reproduction cost, if the present fall in the price level continues, is electricity. At the end of 1931 the investment in this utility was estimated to be near 12 billions of dollars. Of this total, 9 or 10 billions have been invested in this utility since the peak of prices in 1920. A rigorous application of cost of reproduction, or as Mr. Justice Butler phrased it,

[1] Joplin & P. R. Co. *v.* Missouri Pub. Service Commission, 267 Fed. 584.

[2] Galveston Electric Co. *v.* Galveston, 258 U. S. 388, P.U.R.1922D, 159.

a valuation 'on the basis of prices prevailing on the effective date of the order,' would result, probably, in a final figure somewhat lower than the investment. It is not too much to conclude that this 12 billions might not have a present value in excess of 10 or 11 billions. Two other utilities, the telephone and natural gas, stand in the same danger because the majority of their investment is less than twelve years old. So far as the railroads are concerned, the greater portion of their investment antedates the Great War; consequently, their position would not be nearly so precarious. It would appear, therefore, that a rigorous application of the cost-of-reproduction theory to the utilities, based upon spot prices of 1932, would so reduce their rate bases, and consequently their earnings, as to impair seriously the values of their common stocks."

On the other question, regarding the Supreme Court's decision, Professor Woody finds no reason to believe that the court would feel bound by the rule of its own procedure (*"stare decisis"*) if it felt inclined to reverse itself. Professor Woody cites several instances of similar reversal. His further conclusions are as follows:

"First. The Supreme Court does not hold blindly to the rule of precedent if public policy dictates otherwise. It is hardly conceivable that public policy would approve of a valuation theory which would damage the credit standing of the utilities, especially the operating utilities. This, in itself, is sufficient evidence of the unsoundness of cost of reproduction as a theory of valuation.

"Second. The court has not said that it regards cost of reproduction as the sole element of value. It has consistently insisted upon the rule of the Minnesota Rate Cases that valuation is not a matter of artificial rules and formulas, but a judgment based upon all relevant facts.

"Third. As a matter of practice, however, the court, in the Indianapolis Water Case in particular, practically placed its approval upon the exclusive use of the cost-of-reproduction theory based upon spot prices.

"Fourth. In spite of the position taken in the Indianapolis Water Case, the court has left the door open sufficiently wide to forbid a too rigorous application of the reproduction doctrine.

"Fifth. The failure of the Supreme Court to adhere to any one theory of valuation has done more than anything else to keep valuation proceedings in their present unsatisfactory state. The rule of Smyth *v.* Ames is no rule in the sense of furnishing a workable yardstick to the utility commissions. This fact is recognized by both sides in this valuation question. It would seem that the Supreme Court would eventually recognize the weakness of its present position, and adhere to a more definite rule such as cost of reproduction or prudent investment. Either one of these theories would be far more satisfactory than the present vague doctrine of 'fair value.' The uncertainty of the present position of the court is that it talks about 'fair value,' while it is in effect following, in part at least, the theory of cost of reproduction. Which action are we to believe expresses the true intention of the court?

"As has been pointed out elsewhere, any rule which will eliminate some of the present high litigation costs and uncertainty is to be welcomed, even if that rule be regarded as economically the less desirable of two alternatives. The writer hopes that the Brandeis-Holmes-Stone position of prudent investment becomes the rule of the court. Such may become a reality in the light of the present membership of the court.

"Sixth. So long as the court clings to the fair value rule of Smyth *v.* Ames, the commissions unless blocked by some future decision should apply with a rigorous hand the cost-of-reproduction theory, using in their valuation work the prices prevailing at the time of the investigation. Since the utilities have been so insistent, during the past fifteen years of high prices, upon the righteousness of this rule, they ought in fairness be forced to follow the same rule in periods of low prices. At least, they ought to have enough of it to cause them to accept voluntarily such a plan as contract valuation based upon prudent investment. If the court persists in following the unworkable rule of fair value, this last suggestion seems to offer the only way out of the present unsatisfactory state of valuation procedure, unless that alternative plan—government ownership—should replace private ownership and operation."

FORMER Interstate Commerce Commissioner Thomas L. Woodlock, now writing for *The Wall Street Journal,* seems to be amused by the switching of positions caused by falling prices:

"There is an element of grim humor in the present state of the controversy over 'value' of regulated utility property. The decline in prices which has taken place in the past three years has taken both parties to the controversy by surprise and threatens to return each to its position of six and thirty years ago, when, in Smyth *v.* Ames,

Copyright, Washington D. C. Herald, 1932

THE RINGMASTER

the 'liberals' of that day demanded 'reproduction cost' and the railroads demanded 'original cost.' Already whisperings of the shift are beginning to be heard. What a mass of dialectics will have to be forgotten by both contestants! What a glorious opportunity each will have to twit the other with inconsistency! And what gymnastics will be necessary on both sides of the barbed wire fence to avoid damage to clothing in scrambling across it!

"The Supreme Court, at least, will risk little damage to its robes for it has very cannily avoided taking up an exposed position. Review of its many decisions on the point indicates that it has laid down but three definite principles. The first is that 'original cost' is not necessarily 'value for rate-making purposes'; the second is that 'reproduction cost' is not necessarily 'value for rate-making purposes,' the third is that 'value for rate-making purposes' is 'present value,' *i. e.*, value at the time of inquiry into rates. From which the 'liberals' and the 'utilities' may extract such aid and comfort as they can! There ought to be no little amusement for the observer in their attempts in this direction."

Mr. Woodlock, incidentally, places his approval of reproduction cost theory on moral grounds. This is rather unusual, but nevertheless plausible. He says that the so-called "liberal" theory of prudent investment has been popular only because it opened a way to confiscate property by depriving its owners of increases in value resulting from the fluctuation in the prices of material and labor. Used in that way, he says, it was "fundamentally immoral," despite the elaborate sophistries used to defend it.

Mr. Woodlock thinks that for rate-making purposes at least, we will continue to struggle along with reproduction cost value (considered as an element) no matter which way the chips fall. He states:

> "So long as prices of commodities fluctuate in terms of the money unit and so long as the relations of utility companies with their customers are expressed in money units, one or the other of the related parties will secure a temporary advantage from these fluctuations. In a time of ris-

ing prices the customer benefits until his rates are raised; in a time of falling prices the utility owner benefits until rates are lowered. The problem is to keep the relation as stable as may be in terms of commodity prices. The justice of this principle is evident when it is remembered that it is by the means of changing commodity prices that free and unregulated industry and commerce strive to accomplish the same thing. The whole end and purpose of regulation is to supply to the noncompetitive industries the protection to the customer that competition supplies in 'free' industries, together with that protection to 'regulated' capital which managers of 'free' industries achieve by their exercise of judgment, so that the regulated industries shall have equal opportunity with the free industries to secure such capital as they need."

—F. X. W.

VALUATION FOR RATE-MAKING, 1932. By C. Woody Thompson. *Journal of Land & Public Utility Economics,* August, 1932.

UTILITY PROPERTY VALUES. By Thomas F. Woodlock. *The Wall Street Journal,* August 22, 1932.

The Unregulated "Expense Accounts" of our Business Lawmakers

CONGRESSIONAL immunity probably explains how petty grafting on Capitol Hill has grown to be a first-class racket—even in these days of unbalanced budgets, exorbitant taxes, and endless soup lines. Perquisites, plums, and plunder go with every seat in Congress, sufficient to pad the legislative pockets to twice their normal capacity. This system is not a recent development (it has been going on for years); but Washington correspondents, loath to offend their news sources, have taken for granted practices which, in reality, rob the overburdened taxpayers of millions every year.

William P. Helm, long of the corps of correspondents, has dug his news nose deep into the accounts of the Senate pay-off man to produce "Washington Swindle Sheet," an authentic record of cheap graft in high places. The figures speak for themselves, but author Helm has dared to attach amplifiers and a bit of humanization to the recitation of his astounding facts.

If public utility executives were to indulge their whims and foibles, in true senatorial fashion, at the expense of the consumers, what a howl would emit from the antipower champions in Congress! Yet these same watchdogs of utility rates are parties to a specious system which permits spending $18 a day for fancy bottled mineral water for Senators, thousands of dollars weekly for spurious clerk hire, known as the ancient and honorable game of nepotism; for the maintenance of a private restaurant with 80-odd waiters and cooks; for $200-a-day fishing trips; for vacations in the mountains in summer and in the sunny south in winter, and all at public expense, and not one taxpayer or the pay-off man dares to question the expense account, popularly known as the "swindle sheet." Mr. Helm "tells of legal graft that is enough to turn the stomach of any patriotic citizen," observes Marlin E. Pew, writing in *Editor & Publisher.*

Mr. Helm states:

"Many Senators spend public money they would not dream of spending from their own pockets. Their motto is 'easy come, easy go.' Open-handed and big-hearted, they lavish the treasury substance from one end of America to the other.

"In fact, every Senator starts his public career by perpetrating a petty swindle upon the people of the United States. The cheating begins when he hurries for his train to Washington. The swindle operates even before he takes the oath of office. It consists of his taking from the treasury, to cover his trip, a sum approximately four times as much as his actual, necessary traveling expenses. He calls it mileage; but the public has another name for it—graft. If it is graft, it is legalized graft; Senators have been doing it since their grandpas wore diapers.

"That particular graft has been legalized for two generations; others are of later

coinage. A Senator from a distant state thus can slip a thousand dollars into his pocketbook every year—a thousand dollars for which the public receives no return whatever. Five hundred dollars of that sort of graft is only fair-to-middling pickings. Sorry, indeed, is the homesite of a Senator who is unable to make a profit of at least two hundred dollars a year in mileage. A generous Senate has made this graft respectable; a thrifty Senate pockets it."

THE author tells of both small-fry and big-time junkets, of reckless spendings for blimp hire, of airplane rides and houseboats, of generous tips to steamboat captains, stewards, chambermaids, horse wranglers, waitresses, housekeepers, utility boys, stenographers, and chefs. The government pays all these charges and many others, Mr. Helm explains, because the Senate, having no supervision of its expenses other than its own supervision, says that the government must pay them. And by "the government," of course, is meant the taxpayers.

In the aggregate these spendings and extravagances amount to but a small part of a $4,000,000,000 budget, but they are perpetrated by men who have a mind for small things and who would saddle onto the public utility corporations additional taxes to furnish the funds for their own indulgences.

The book lists the amounts paid to each Senator for mileage and for stationery, and it names members of Congress who practice the family payroll racket, the costs of select junketing committees, and the expense of Congress as a whole.

"Those folks who learn about the government from books will have to read another book," writes Raymond Clapper, United Press staff correspondent, in commenting about Mr. Helm's book. He adds:

> "Mr. Helm takes up the science of government where the school books leave off and tells how a Congressman actually works—not how he describes that alleged process to his constituents. The classic college text is Woodrow Wilson's Congressional Government, but author Helm has discovered a whole bookful of things that Wilson apparently didn't know about Congress."

—M. H. GLAZER

WASHINGTON SWINDLE SHEET. By William P. Helm. New York: Albert and Charles Boni. 250 pages. $2.50. 1932.

The Federal Trade Commission Points the Way to Future Regulation

THERE is a common attitude taken by modern economists and writers on political economy that "America is at the crossroad"; that she must decide between more regulation of business or less regulation of business. We have been assured over and over again during the last few years that our country stands poised midway between the political philosophy of Jefferson, Madison, and other followers of the Virginian school of government, which believed in governing as little as possible, and the newer policy of complete regulation of industry.

It is a pretty picture. It is comforting to know that we at least have a choice, even if it comes suspiciously close to being Hobson's choice. But an increasing number of alert writers and thinkers are gradually coming to face the fact that this picture is an illusion. There is no choice. America is not at the "crossroad" and there isn't any crossroad. Rather we are being pushed by inexorable economic forces steadily towards increased regulation of industry.

True to our heritage of individualism, we are reluctant to see this gradual surrender of industrial freedom. We look back wistfully at the peaceful little village of Monticello whence Thomas Jefferson put forth his theories of government and of individual and commercial freedom, but we cannot turn back

even if we would. It is as unthinkable for us to relinquish regulation today as it would be to abolish automobiles and go back to horse-drawn vehicles. And, just as we are bound to have more and bigger and faster automobiles, so we are bound to have more and bigger and stronger regulation. We started with the railroads. We added gas, electric, telephones, and the rest of the utility family. Next came stockyards and pipe lines. Now oil, coal, and radio are knocking at the door and want to be made full-fledged members in good standing. If there were any choice that could be feasibly made, we could conceive of the idea of abolishing all these regulatory commissions. We would tell the railroads to run their own business and let the gas and electric companies get all they can out of the public. But the very thought seems absurd as a serious probability. And so we might as well admit we have no choice. Regulation is here to stay, and we will have more of it.

ALL these thoughts arise in one's mind as he reads the latest work of Thomas C. Blaisdell, Jr., entitled "The Federal Trade Commission." Unlike previous works on this commission, Mr. Blaisdell's book is not a survey of the trust and industrial monopoly problem, nor an analysis of the commission's administrative difficulties; nor, finally, is it a detailed examination of business practices from the standpoint of price fixing. Mr. Blaisdell has wisely kept on a rather narrow but interesting and fruitful track. It can be summarized in two questions:

(1) For what was the Federal Trade Commission created?

(2) How has it accomplished that purpose?

Following this track we are faced immediately with the naked truth that the Federal Trade Commission started out, as the baseball sport's writer would say, "with two strikes on him." It was based on what we are all beginning to suspect was a great fallacy. It was founded on an economically false premise. In a word, the Federal Trade Commission was created *to restore competition as a major force in regulating industry*. This aim assumed, therefore, the sanctity of the doctrines of Adam Smith concerning supply and demand. It assumed the infallibility of the proposition that competition is the life of trade and absolutely necessary to industrial honesty and progress.

It is remarkable that such childlike faith in the efficacy of competition persisted as late as the first administration of Woodrow Wilson, when the commission was created. The fact that we had to remove, one by one, such businesses as the various utility types from the realm of competition and specifically exempt them from the operation of the Sherman law and authorize them to form monopolies does not seem to have shaken our faith in the general proposition that competition was a fine thing and ought to be preserved at all costs. We were willing to explain the utilities as exceptions, inherently monopolistic, and naturally restricted as to number and as to type. Recent developments have made us very doubtful as to these limitations, but as Mr. Blaisdell tells us in his first chapter:

> "A fundamental tenet of the industrial philosophy of America has been the belief in the beneficent character of competition. This faith, rooted in the eighteenth-century doctrines of liberty and freedom, has been bulwarked by the evolutionary dogma of the survival of the fittest. In business it has received assent largely because of the possibilities which it opens to those who wish a free hand in commercial and industrial activities.
>
> "A widespread conviction that the growing power of the giant corporation was weakening the vitality of competition crystallized in the early years of the presidency of Woodrow Wilson. The tangible evidence of this conviction was an attempt to rehabilitate competition by passing the Federal Trade Commission Act (1914) and the Clayton Act (1914). In these statutes were no new ideas, as the common law of 'restraint of trade' had long been a part of legal doctrine, while the Sherman Act (1890) had declared 'every contract, combination in the form of trust, or otherwise, or conspiracy, in restraint of trade or commerce among the several states or with foreign nations' to be illegal."

SHORTLY after its birth the commission began its difficult task of defining "unfair methods of competition" and of reducing this rather general phrase to a definite working formula. The result was a memorandum codifying industrial morals and listing the offenses against free competition in the following sixteen commandments of "Thou-shalt-not-engage-in:

"1. Inducing breach of competitor's contracts.
2. Enticing employees from the services of competitors.
3. Betrayal of trade secrets.
4. Betrayal of confidential information.
5. Appropriation of values created by a competitor's expenditures.
6. Defamation of competitors and disparagement of competitor's goods.
7. Misrepresentation by means other than words.
8. Misuse of testimonials.
9. Intimidation of competitor's customers by threats of infringement suits.
10. Combinations to cut off competitor's supplies or to destroy his market.
11. Intimidation, obstruction, and molestation of a competitor or his customers.
12. Exclusive dealing.
13. Bribery of employees.
14. Competing with the purchaser after the sale of business and goodwill.
15. Passing off the goods of one manufacturer or dealer as those of another.
16. Conspiracies to injure competitors."

THE functioning of the commission was divided by Mr. Blaisdell into two parts:

(1) The administrative functions:
(2) The investigatory functions.

These classifications are solely for purposes of analysis and are not to be thought of as water-tight compartments of the commission's powers. As a matter of practice they frequently overlap and complement each other.

Under the first head Mr. Blaisdell seems to think that the commission has done as well as can be expected—indeed, even remarkably well under the circumstances. What circumstances? Well, first of all there is the glaring fact that the commission is unalterably dedicated to a principle that, if not actually false, is manifestly susceptible to radical correction. To expect a commission founded on a false or shifting premise to accomplish great things is as much as expecting a board of Zion City astronomers, dedicated to the proposition that the world is flat, to contribute substantially to the knowledge of the firmament. Then again, the commission has suffered continuous and disheartening reverses from the courts. It has frequently lacked necessary coöperation of the Department of Justice. And finally, like all other commissions, it has suffered from legislative intimidation and attempts at domination.

On this last point, Mr. Blaisdell tells of a savage attack made on the commission and its employees on the floor of the Senate by Senator Watson of Indiana. Shortly after, Mr. Stuart Chase and Mr. A. S. Kravitz, whose work in particular seemed to enrage Senator Watson, were let out for "lack of funds." Mr. Chase openly charged that his dismissal was due to political pressure and an effort by the commission to secure a favorable budget from congressional leaders, including Senator Watson. Shortly after that former Congressman Van Fleet from Indiana and friend of Senator Watson, was appointed to the commission.

MR. Blaisdell gives other interesting details of legislative and political pressure. He intimates that the political shift caused by the Harding-Coolidge régimé resulted in a change of commission policies favorable to "big business"—that its present function is chiefly to regulate unfair competition among smaller businesses.

Finally there was the opposition from the court. Thanks to the judiciary, the commission may not now function for the consuming public, but solely for the benefit of private industry. Whether one industry is fairly competing with another is always the absolute test to the commission's right to entertain jurisdiction of a complaint—that the industry may be swindling the public is immaterial. Here is a passage from the Supreme Court's opinion restraining the commission's prohibition against the the manufacture of anti-fat preparations

which the commission found were of little or no curative value (Federal Trade Commission *v.* Raladam Co. 283 U. S. 643). Referring to the act creating the commission, it was stated:

> "It is obvious that the word 'competition' imports the existence of present or potential competitors, and the unfair methods must be such as injuriously affect or tend thus to affect the business of these competitors—that is to say, the trader whose methods are assailed as unfair must have present or potential rivals in trade whose business will be, or is likely to be, lessened or otherwise injured. It is that condition of affairs which the commission is given power to correct, and it is against that condition of affairs, and not some other, that the commission is authorized to protect the public. Official powers cannot be extended beyond the terms and necessary implications of the grant. If broader powers be desirable, they must be conferred by Congress. They cannot be merely assumed by administrative officers; nor can they be created by the courts in the proper exercise of their judicial functions."

WHEN we pass on from the commission's functions as an administrator to those of investigator, its anomalous position becomes more apparent. It was created to prevent monopolies, yet here we find it empowered to investigate them. It was created to suppress monopolies, yet here we find the commission making recommendations (and splendid recommendations at that) for the regulation of monopolies *as monopolies*. It almost seems like as if our Zion City astronomers were drawing up plans for a round-the-world cruise. If, as the original Federal Trade Act stated, trade monopolies are wicked, then they should be abolished and the Federal Trade Commission should abolish them. And yet we find here a paradox in government that would dumbfound even Gilbert Chesterton. We find, in short, that the Federal Trade Commission investigations of monopolies have shown some tendency to lead *to the legalizing* of these monopolies, subject, of course, to governmental regulation. This is shown by its investigations, summarized as follows:

First of all Mr. Blaisdell tells us about the meat-packers' trust, which President Wilson ordered the commission to go after in 1916. The net result was the "consent decree" and the Federal Stockyards Act under which the packers are regulated just as utilities by the Secretary of Agriculture. Having tracked down a monopoly and broken it up as much as legally possible, the commission apparently felt that a regulated open monopoly was less harmful than an unregulated concealed one. The investigations of the steel, tobacco and aluminum monopolies produced minor lasting improvements. Its investigation into the oil industry did little to promote competition in that field but undoubtedly stirred states into regulating pipe line carriers and other phases of the oil industry. Its current investigation of the "power trust" will undoubtedly result in legislation not designed to promote free competition, but to bring the monopolistic holding companies under Federal control. And so we see that the commission, limited by the courts and Congress, buffeted by political pressure, and hamstrung by the inherent difficulty of its own position, has nevertheless succeeded in shaping our policies for the future. It is the spearhead of future regulation. It may fail to win its own cases, but prepares the way for more effective control where it is needed. Only a few days ago it won a hard-wrung victory in a Federal court against a holding company regarding its power to require certain evidence. Our Federal Power Commission, Federal Radio Commission, the Secretary of Agriculture, and other commissions as yet unborn will wax more powerful in years to come, but behind them the student of government will generally find the same picture—the Federal Trade Commission's investigation.

—F. X. W.

THE FEDERAL TRADE COMMISSION. Thomas C. Blaisdell, Jr. Columbia University Press. 323 pages. $3.00.

Will the Utilities Profit by the Roosevelt Plea for Prudent Investment?

THE reproduction cost method of rate-making valuation has often been called a "two-edged sword." It cuts against the utilities during a period of falling price trends. It cuts against the ratepayers during a period of rising price trends. To substitute the investment cost method, or its more refined twin brother, "prudent investment cost," would abolish this fluctuation and tend to stabilize the utility's rate base for all time.

It is easy to understand then why the critics of the utility industry were the staunchest advocates of reproduction cost in 1898 when they won their point in Smyth *v.* Ames and why they were driven into the camp of prudent investment cost advocates when their victory proved to be a boomerang during the rising price period of the World War and the years immediately following. The utilities, for the most part, also changed sides. This alignment has continued until the present day but the new low price trend makes the disinterested observer wonder if a new shift back to the old setup is far off. True it is that many railroads and older water utilities still find it profitable to compare present-day costs to the period in which their respective properties were constructed during the late nineties and opening years of the twentieth century, but owners of telephone and power utility plants more recently constructed are beginning to wonder if they might not well support Governor Roosevelt in his plea for the permanent adoption of the investment cost criterion. The District of Columbia commission, for example, recently found that the reproduction cost of the plant of the telephone company serving the city of Washington was considerably below the original cost because the construction occurred chiefly during the high price period of 1928.

Governor Roosevelt nevertheless continues to be consistent in his support of prudent investment cost. Here is an excerpt from his recent speech in Milwaukee:

> "And I have made it fully clear, and I know that the great majority of people in Wisconsin will agree with me, that the so-called reproduction theory is wholly unsound, and that we must substitute for this a rate base which rests upon the theory of prudent investments—in other words, a fair return on the actual money going into the public utility itself, and no more."

THE *Wall Street Journal* comments rather caustically upon the probable reaction of the Milwaukee audience to this statement:

> "But many of them must have remembered that the reproduction cost theory of utility value was invented in Wisconsin, that to the first and greatest La Follette it was no theory but a sacred principle. Senator La Follette, with the invaluable assistance of W. J. Bryan, drove the railroad valuation act of 1913 through Congress because he was convinced that a return only on reproduction cost of the railroads would mean rate reduction or at least prevent rate increase. At that time railroad owners were frantically protesting that a return on original cost, not reproduction value, was their sacred birthright.
>
> "'For what you have done in this respect I congratulate you,' said Governor Roosevelt in the same address. So far as the railroads are concerned, what Wisconsin did was to initiate the destructive and generally futile controversy of the past two decades over property valuation method. Its latest stage is fitly symbolized by the pathetic recommendation of the Interstate Commerce Commission that Congress abandon all theories of valuation and direct the commission merely to make rates which will maintain the essential railroad service."

THE Newark *Evening News* takes the more practical view that the utilities would be smart if they cheered the governor on in his proposal to "abolish by law" the fluctuating yardstick of reproduction cost. The editorial states:

> "In his advocacy of the abolition of the reproduction theory—more generally known as the 'present-day' value theory—

the Democratic presidential candidate probably will be cheered by the public utilities themselves. The time is approaching, if it has not already arrived, when 'present-day' value of public utilities is less than investment value.

"Roosevelt cannot be unmindful of what the United States Supreme Court has said regarding what shall constitute the value of a public utility for rate-making purposes. He must be aware that the court, acting in cases in which the constitutional issue of confiscation was raised, has given predominate consideration to present-day value. Any law passed by the state or the Congress would have to bear this line of decisions in mind if they want the statute to stand the test of constitutionality. . . .

"The fact is that true value lies somewhere between investment costs and present-day value. The acceptance of either as an exclusive criterion of value is illogical and to the detriment either of the public or the public utility. However, to have based rates upon reproduction value during days of prosperity, to the detriment of the public, and then to substitute for it investment value, which would again work to the financial advantage of public utilities, is to give the public the worst of it in both instances."

MR. Francis C. Fullerton, speaking from the standpoint of the investor in utility securities, presents, in the *Magazine of Wall Street*, a very sober and thought-provoking argument in favor of the utilities shying away from reproduction cost at this time:

"The problem of the fair value of the property is a knotty one as it involves opposing viewpoints on valuation. To protect the investor in the utility companies, a return should be allowed on the actual investment made in the properties regardless of current value. On the other hand, it is perhaps significant that construction costs have declined sharply in the past two years, fully 25 per cent, after having remained fairly well stabilized at the higher level since 1918. The 13-year period, 1918 to 1930, was one of rapid and necessary expansion for the utility industry. Of the total electric capacity in the United States at the end of 1930, approximately 84 per cent was built or replaced during this period; about 69 per cent of the manufactured gas capacity was either built new or replaced and about 83 per cent of the telephone capacity. If the present lower level of costs becomes stabilized, the utility companies will find themselves with a large capacity of high cost properties and may well present a serious problem in the coming years."

Mr. Fullerton goes on to show that the rest of the current proposals to "reform" the utilities present little practical danger to the investor's interest. He finds that holding company regulation, for example, would not be detrimental to "the soundly managed operating or holding company, nor the holders of their securities." It might even be desirable as regaining public confidence shaken by certain abuses among holding companies. The proposal to reduce the utility's return to a depression level, he thinks, is not likely to clear the hurdle of the Federal courts.

If all this is true, the dismal science of economics puts the old-fashioned politics in the shade when it comes to making strange bedfellows. It would not be surprising to hear of the utility associations passing resolutions supporting Governor Roosevelt's programs. Indeed, if the governor will scan his campaign audiences closely, he may recognize certain wide-awake utility officials among those applauding the loudest. No evidence has come to light so far, however, that the utility rate critics are going back to the old reproduction cost camping ground. And so the campaign may end up in a great love feast by "one big happy family."

—M. M.

EDITORIAL. *The Wall Street Journal*. October 3, 1932.

EDITORIAL. *Newark Evening News*. September 24, 1932.

WHAT CLOSER INVESTIGATION OF THE UTILITIES MEANS TO THE INVESTOR. By Francis C. Fullerton. *The Magazine of Wall Street*. September 17, 1932.

Other Articles Worth Reading

THE POSITION OF THE ELECTRIC POWER UTILITIES IN THE INDUSTRIAL SLUMP. *The Annalist*. June 3, 1932.

THE RAILROADS' FUTURE AND MOTOR TRANSPORT. By L. J. Hackney. *The Review of Reviews*. August, 1932.

The March of Events

A Model Truck Law for the Middle West

A UNITED Press dispatch from Kansas City, Missouri, on October 6th states that representatives of the public service commissions of 10 midwestern states met in that city and drafted a model common carrier truck law with the hope of making it the basis of Federal and uniform state regulation.

Features of the model statute include compulsory insurance, the setting of minimum rates, police powers for inspectors, and taxation on the basis of mileage or flat fees. The completed draft of the law will be submitted at the annual convention of the National Association of Railroad and Utilities Commissioners at Hot Springs, Arkansas, November 15th.

Alabama

Lower Phone Rates Sought for Birmingham

ENSLEY Merchants and Business Men's Association will carry its fight for lower telephone rates to the Alabama Public Service Commission, according to a dispatch from the Birmingham *News*. Resolutions urging that the public service commission investigate the possibility of obtaining lower telephone rates and calling attention to the lower rates on gas and other public utility services were adopted at a meeting of the association. Mr. Bedford Seale, president of the association, asked the aid of the Birmingham Chamber of Commerce and other organizations. It was stated that if in the end the association filed a petition with the commission, the latter will set a date for hearing.

Arkansas

El Dorado Gas Rate Fight Goes to City Council

A FIVE-MONTHS' wrangle over gas rates charged in El Dorado was passed on to the utilities committee of the city council, which began a study of testimony preparatory to making a recommendation to the council. The fight was waged principally on the valuation figures set up by the engineers of the gas company serving the city, who charged $608,739.63 less depreciation as the value of the property of the Public Utilities Corporation of Arkansas in El Dorado. The city engineers valued the property at $190,-094.41. The gas company was accused of having charged 85.59 miles of pipe which city engineers declared was not useful in city operations to the value of the property used by the city. The company's attorney, W. H. Arnold, said that any ordinance passed by the council reducing gas rates would be resisted in state or Federal courts.

California

Widespread Gas Rate Reduction Looms

AN emergency reduction in gas rates for 127 cities, towns, and communities, including San Bernardino, was in prospect when the state railroad commission ordered the Southern California Gas Company to show cause why such a reduction should not be made pending completion of the commission's general investigation into the utility corporation's rates. The investigation formally opened during the last week in September

at a hearing conducted by the commission in Los Angeles. City Attorney William Guthrie represented San Bernardino at the session.

The hearing on the order to show cause was set for October 11th to be held before Commissioners William J. Carr and Fred G. Stevenot. Both commissioners took the evidence under advisement and a decision was expected at an early date.

Colorado

Inquiry into Gas Rates Opened

AN inquiry into wholesale rates for natural gas in Colorado was opened by the commission of that state during the last week of September. The commission was seeking to force the Colorado Interstate Gas Company to obtain a state permit and be made subject to the jurisdiction of the commission.

The Colorado-New Mexico Coal Operators Association joined in the hearing and contended that the pipe line company should be under state jurisdiction. The company at the hearing refused to disclose the rates charged the various distributing companies and industrial concerns to which it furnished natural gas. In a prepared statement counsel for the company said that the rates had no bearing on whether the commission had jurisdiction in the case. If the commission holds that it has jurisdiction over the pipe line company, it is expected that the courts would be asked to determine if the state commission can regulate wholesale gas rates.

Connecticut

Manchester Rate Hearing Ends

IN presenting his closing argument for the reduction of local electric rates before the commission, Professor Albert Levitt of Redding, counsel for the Taxpayers' League, said that the earnings of the Manchester Electric Company were so unreasonably high as to constitute a violation of the Fourteenth Amendment of the Constitution. Professor Levitt closed his summation of the 5-day hearing by submitting a substitute rate structure. In reply, Richard Joyce Smith, who, with Austin D. Barney, represented the local light company, made blanket denials of Levitt's allegations, and said that the company's earnings were not excessive and that without close study and expert advice it would be impossible to present a model rate structure as attempted by Levitt.

Chairman Higgins of the commission gave the company until November 1st to file its brief and until November 15th for Professor Levitt to file a reply. Time extension given to Professor Levitt was because of the fact that election occurs during the first week of November and he is candidate for governor on the Independent Republican party ticket.

During the hearing the so-called area charge was attacked by Professor Levitt who said that it was not the function of the company to say that the customer should use what the company thinks is the normal or proper amount of current. The charge was defended by Luther R. Nash, nationally known rate expert, who testified that in his surveys of all cities of over 20,000 the area charge was used in 6 per cent while the area and room features combined were used in 37 per cent. He found that the ordinary flat rate was used in 22 per cent and promotional charges of some kind in 78 per cent. He said that since 1922, when the area charge was installed in Manchester, the current consumption had more than doubled.

District of Columbia

Reduced Phone Rates Delayed

THE public utilities commission on September 29th delayed for ten days its order reducing telephone rates by 10 per cent. The Chesapeake & Potomac Telephone Company, however, asked District Supreme Court Justice Peyton Gordon to issue a restraining order. It was at the request of Justice Gordon that the commission suspended its order for ten days. Justice Gordon made the request so that he might have an opportunity

to study the brief submitted by both sides preliminary to determining the company's petition for a temporary injunction. The company contended in the arguments before Justice Gordon that the commission's order would amount to confiscation of its property, while the special assistant corporation counsel, William A. Roberts, denied the company's contention and said that the commission had reached its conclusion after a most careful survey of the evidence submitted.

Gas Company Praised for Coöperation

IN a meeting of the Federation of Citizens Association, held on October 1st, William McK. Clayton, chairman of the utilities committee, praised the record of the Washington Gas Light Company for coöperating with the consumers in granting three rate reductions in two and a half years without recourse to court action. Several delegates joined with Mr. Clayton in his remarks. The company is at present in negotiations with the District of Columbia commission regarding a proposed reduction in the charge for service connections. At present the gas consumer pays one half of the cost of installing the pipe line from the street gas main to his house. The commission proposes that the company install the line free of charge from the street main to the property of the consumer. The question remains as to whether the consumer would be required to pay the total cost for continuing the pipe line across his property to his house or whether the expense would be shared by the company.

Florida

Attacks on West Palm Beach Rates

ADVOCATING concerted action with West Palm Beach citizens, three speakers addressed an audience at Palm Beach on September 27th and attacked rates of utilities, not only in the vicinity of Palm Beach, but in other sections of the country. Mayor E. B. Donnell, the first speaker who presided over the gathering, declared that the power and light company's franchise was the worst "outrage ever foisted on a citizenry," according to a dispatch in the Palm Beach *Post*, and expressed the hope that the company would refuse to sell the city electricity because the result of such action would necessitate the financing of a municipal plant. The second speaker, Mr. W. F. Finch, an attorney, attacked the rates of the telephone company and claimed that the citizens could compel a reduction in rates by discontinuing the service. He stated "I would like to see 5,000 phones in Palm Beach county discontinued." The final speaker, John Ziegler, also an attorney, urged the citizens to fight the gas company with kerosene oil, the water company with wells, and the power company and telephone company with "economic discontinuances." In the meantime in the city of Jacksonville, the city commissioners by a 4 to 1 vote referred a motion to investigate illuminating gas rates to City Attorney Austin Miller. The city attorney has been asked if the city commissioners may legally proceed with an investigation of such rates upon its own initiative.

Illinois

Tax Proposed on Electric Poles Based on Voltage

A BILL (H. 36) has been introduced at the special session of the legislature for an annual license fee upon the poles of any electrical transmission system on public highways, the amount of the proposed fee being based upon the voltage carried over the poles, the number of conductors used, and the number of pairs of wires carried in aerial or underground cables. The fee would be payable to the county within which the poles are located, and the proceeds would be used only for the relief and support of poor and indigent persons in such county. Municipally owned electrical transmission systems would be exempted from the provisions of the act so far as such systems are located wholly within their own corporate limits.

Another bill (H. 38) proposes a tax of 3 per cent upon the gross earnings of the intrastate business of public utilities during the period from October 1, 1932, to July 1, 1933. The proceeds would be paid into the emergency relief fund of the state treasury for disbursements to the needy.

Indiana

Evidence Submitted by City Criticized

IN the opinion of Wilbur E. Sutton, writing in the Muncie *Press* for September 28th, the city of Muncie failed to make an impressive showing in the hearing of its petition for lower telephone rates before the Indiana commission. Mr. Sutton pointed out that the commissioners and the telephone company were all adequately armed with figures which the city was unable to question through a lack of preparation to do so. He feared that future hearings scheduled for gas and electric rate complaints would likewise be poorly handled by the representatives of the city, and pointed out that such hearings cost the Muncie citizens many thousands of dollars with no prospect of success. He stated:

"Maybe the utility rates are not unreasonable and maybe the city has no case, but it surely is entitled to fair recognition through its public officers or the petitions should not have been filed. A suit is not won by oratory, complaints, and allegations, but by facts and evidence. It seems that although there may be plenty of facts and evidence to support the city's contentions (or may not be) these are not at hand for presentation before the public service commission."

He concluded that it is senseless for Muncie citizens to complain about oppression, real or fancied, if they do not take the trouble to prove they are oppressed.

Utility Proposes Rate Reduction

AS a culmination of several months of negotiation between Elkhart city officials and the heads of the Indiana & Michigan Electric Company, the utility on September 29th delivered to City Attorney James L. Harman its proposal voluntarily to reduce electric rates. A similar proposal was made for service in South Bend and submitted to the utilities committee of the South Bend city council. Should the city accept the proposal, approval by the state commission will be necessary before the proposed rates are placed into effect. The present rates provide for a kilowatt hour charge of 7½ cents for the first thirty hours; 7 cents for the succeeding thirty hours; 6 cents for the next forty hours; and 5 cents for all consumption over one hundred hours. The proposed rates would charge 6½ cents for the first thirty hours; 6 cents for the next seventy hours, and 5 cents for all consumption in excess of one hundred hours.

Kansas

Candidate Pledges Lower Phone Rates

GOVERNOR Harry H. Woodring, Democratic candidate for reëlection, promised the Arkansas city voters that he would make the Southwestern Bell Telephone Company the next object of his utility rate reduction program. He stated:

"If you reëlect me, I'll not only clean up the Doherty gas rates, but when I get that gas business cleaned up, I'll bring down the wartime telephone rates."

The governor defended his method of collecting campaign funds pointing out that contributions from state employees and small individuals did not put a governor under as much obligation as candidates who accept contributions from rich corporations. The governor, in explaining his position as to his solicitaton of compaign funds, stated:

"The one that takes money from the rich corporations can't. He has sold out. If he wants to reduce utility rates, he is told he can't, because of a contribution to his campaign. Thank God, no man like that has contributed to my campaign."

Kentucky

Excess Gas Rate Refund Is Ordered

THE city of Lexington and its gas consumers scored a victory in its gas rate litigation with the Central Kentucky Natural Gas Company when Federal Judge Charles H. Moorman of Louisville and Judge Smith Hickenlooper of Cincinnati signed an order denying the company's prayer for an injunction against the state commission and direct-

ing that the impounded funds be returned consumers. The impounded funds, collected since 1926, when the gas company's 25-year franchise expired, amounted to approximately $750,000. These funds were to be held until the final disposition of the litigation, when they were to go to the gas company if the 60-cent rate was approved by the courts, or to be returned to the consumers proportionately if a lower rate was approved. A recent order of the court fixed a 50-cent rate as fair. The company refused to accept this judgment. As a result of this refusal the Federal court denied the prayer of the gas company to restrain the commission from distributing the impounded funds proportionately in accordance with the 50-cent rate order.

Maryland

Rate Negotiations for City of Baltimore

HOPE for a reduction in gas, electric, and telephone rates in Baltimore as result of conferences between the public service commission and the various utility companies was expressed by commission officials in reply to a letter to them from Myer Reamer, a member of the Baltimore City Council, according to the Baltimore *Sun* for October 1st. The Reamer letter asked for rate cuts.

Mr. Reamer's letter points out that gas, electric, and telephone rates have been cut in Montgomery and other counties of Maryland near Washington and on the eastern shore. He expressed the opinion that if rate reductions could be made in other parts of the state, they might also be made in Baltimore. The letter of the commission, written by Secretary Frank Harper, expressed confidence that pending negotiations would result in a rate reduction.

Michigan

City Group Declines to Favor Municipal Plant

THE public utilities committee of the city commission of Flint on October 3rd refused to recommend an ordinance providing for the municipal ownership of public utilities as demanded by Paul A. Ott, head of the citizens' group advocating local rate reductions. Commissioner Harry G. Davis, chairman of the committee, said that the committee would not recommend such an ordinance unless "better ways and means of obtaining municipal ownership are shown." Mr. Ott withdrew his request and indicated he would circulate initiative petitions to place the question before the voters on November 8th as he has previously threatened to do. Mr. Ott urged the commission to appoint a fact-finding committee to study rates in other cities and to find out if other power companies could be interested in coming into Flint on a competitive basis.

Nebraska

North Platte Council Fixes Cheaper Gas Rates

THE city council of North Platte has adopted an ordinance to be effective November 1, 1932, reducing natural gas rates in North Platte to the same level as those effective in Hastings, Kearney, and Grand Island. The reduction is calculated to save about 15 per cent to small consumers of gas. A 10 per cent penalty clause suggested by the Northwestern Public Service Company for unpaid bills was rejected. The adoption of the ordinance was the outcome of a campaign begun in North Platte several weeks ago by a citizens' committee to obtain lower rates for both gas and electric current. The council named three of its members to work with the committee in drafting an ordinance for fixing electric rates in the city, according to the Omaha *Bee-News*.

Nevada

Voluntary Rate Cut Fails to Satisfy

FOLLOWING the filing of a new schedule with the Nevada Public Service Commission by the Western States Utilities Company of Winnemucca, wherein the company proposed a voluntary 10 per cent cut in its charges for power and electricity, residents of Winnemucca have asked the commission to order a cut of 25 per cent in the charges made by the company. Negotiations between the parties continued.

New Jersey

New Jersey Electric Rate Reductions Forecast

A REDUCTION in the electric rates of Public Service Electric & Gas Company at the end of the current year was forecast on October 6th by Edmund W. Wakelee, vice president of the company, according to a news item in the Newark *Evening News*. Mr. Wakelee stated that it was the hope and belief of the management of the company that "barring any substantial increase in taxes or material changes, conditions at the end of the current fiscal year, will permit a further reduction in electric rates." Mr. Wakelee confirmed the report that negotiations regarding what revisions should be made are under way with the public utilities commission. The statement of Mr. Wakelee was made in a letter to City Commissioner George W. Page of Trenton, who had asked if there were a chance for rate revision.

The commission, in addition to negotiating with the Public Service Company on rate revision, also intends to confer with the officials of the Atlantic City Electric Company, with a view to effecting reductions in rates in that city. The commission outlined its views on rates in a statement issued October 5th. The statement declared that it would wait until a complete picture of the year's operations was at hand before moving to compel any rate reductions. It indicated that such reductions seemed warranted. According to the commission's statement negotiations already have effected rate reductions aggregating approximately $1,500,000 in 1932. Informal negotiations were preferred to formal procedure because of the expense and delay which attend the latter.

The commission reported that the gross earnings of utility companies have so far this year been declining. In 1931 it was said that the return for gas companies was between 6.9 per cent and 8 per cent, and for electric light companies between 7.55 per cent and 9.07 per cent during the same period. The Public Service Company, supplying Trenton and much of the state, earned 8.7 per cent last year, according to the commission, and its transport division, 3.55 per cent. The earnings of the New Jersey Bell Telephone Company were between 5.25 per cent and 5.675 per cent. The demand for rate reduction was inspired, the commission said, by a general decline in commodity prices, but this decline, it was pointed out, had not benefited the utilities particularly.

Mayors to Press Utility Rate Fight

THE Camden County Mayors' Association will ask the New Jersey State League of Municipalities to press a fight for lower gas and electric rates, according to a news dispatch to the Philadelphia *Bulletin* on October 6th. At a meeting of the association in Audubon a resolution condemning the rates as excessive was adopted. Figures were presented indicating that they are higher than the average rates in 178 cities throughout the country. A copy of the resolution was taken to the League of Municipalities which opened its 2-day annual convention at Asbury Park on October 6th. It was presented by Mayor Harry Haggerty of Laurel Springs, and Mayor Joseph H. Van Meter of Collingswood.

Mayor Robert G. Downer, of Runnemede, urged a revaluation of the property of the Public Service Company and said that such a move "would cut rates 50 per cent and still allow a reasonable profit." The present valuation, he said, was made years ago at boom figures. In the meantime the attitude of the Public Service Company was indicated by an address of its vice president, John L. O'Toole, at a dinner of the Camden Rotary Club held at Camden on October 4th. Mr. O'Toole pointed out that a reduction in electric rates would affect the credit of the Public Service Corporation and would have an inimical effect upon the "interest of the people." Mr. O'Toole hinted that discussions by various municipal officers of the Public Service Com-

pany's affairs were not "based on facts and knowledge of conditions." He declared that the company would welcome a discussion supported by facts.

New York

Voluntary Rate Cut in Saranac and Gloversville

VOLUNTARY rate reductions were promised in recent reports from the Gloversville-Johnstown district served by the New York Power & Light Corporation, and the Saranac Lake district served by the Paul Smith's Electric Light & Power Company. The former corporation will soon file with the New York commission a schedule for new and lower rates for all classes of commercial and industrial service, according to an announcement made by Stephen C. Bunting, resident manager, in the Gloversville *Herald*, October 6th. The new rates, based upon present business conditions, will affect an immediate saving to the customers in the cities affected of approximately $40,000 a year, with probable greater savings with the increased use of service. Subject to the approval of the commission, the rates will become effective within thirty days after the date of filing. It is understood that the common councils in Johnstown and Gloversville, both of whom recently applied to the commission for an order reducing rates, will accept the action of the company.

The reduction of rates by the Paul Smith's Electric Light & Power Company for consumers in Saranac Lake was expected to be announced shortly, according to a news dispatch in the Syracuse *Post-Standard*, October 3rd. The company's action was said to result from protests made more than a year ago. The protests originally made to the state commission through the village board of trustees were referred to the executives of the company and village officials for adjustment. Following numerous conferences an agreement was reached which has been submitted to the commission at Albany for ratification. It was expected that the commission would approve the agreement. The exact amount of the reduction was not made public.

Home Rule Regulation Asked for New York City

BOTH major political parties were asked by Borough President Harvey, as part of the program of the Greater New York Consumers' League of which Mr. Harvey is chairman, to adopt as part of their platforms a resolution for legislative action which would take away from the public service commission the power to fix electric and gas rates and to vest such authority in the law-making bodies of counties and municipalities. President Harvey's proposal was sent to the chairmen of the Democratic and Republican state conventions respectively. Mr. Harvey's program also provided that the public service commission personnel should be selected without regard to political affiliation and that such appointments should give due consideration to proven technical and professional ability. The proposed utility plant would delegate the public service commission to a position of a "special court of appeal," according to a news item in the Long Island *Star* of September 30th. The commission, however, would retain original jurisdiction to fix rates where local authorities would not assume their rate-making functions provided in the proposed change in the law. The program included additional provisions for simplifying rate-making procedure.

North Carolina

Voluntary Power Rate Reduction Submitted

THE state corporation commission on October 1st announced that three major utility companies in North Carolina, among them the Durham Public Service Company, had submitted voluntary proposals for the reduction of electric rates, according to a news item in the Durham *Herald-Sun*. The other utilities submitting voluntary rate reduction proposals were the Tidewater Power Company and the Southern Public Utilities Company. The announcement was made by Commissioner J. Stanley Winborne who also declared that the commission had neither accepted nor rejected the proposals but had turned them over to Dr. Charles E. Waddell, utility rate expert employed by the commission to aid it in its current investigation of utility rates "for study and analysis." He

declined to divulge the extent of the reductions proposed. Commissioner Winborne also explained that the commission is moving somewhat more deliberately with its rate negotiations than originally anticipated in some quarters in order to avoid court reversals.

Oklahoma

Customer Strike Agitated at Ponca

To "recall" present telephone rates in Ponca City with a demand for lower rates all along the line, petitions were being circulated by W. K. Moore, former city attorney. The plan followed is similar to that already in progress at Hutchinson, Kansas, and formerly adopted at Amarillo, Texas, wherein the demand for lower rates binds the signers of the petitions to disconnect their telephones until rates are lowered. Local telephone officials said that there is now pending a general rate adjustment case before the state commission which will affect all portions of Oklahoma when decided, and that the last legislature appropriated $250,000 for a telephone survey of the state which is now being made by engineers of the corporation commission, recently in Ponca City.

Reduced Rates on Deposits Sought

Application has been filed with the corporation commission by the Oklahoma Natural Gas Corporation seeking a reduction of interest rates paid to its patrons on deposits. A reduction from 6 to 5 per cent is asked. Three years ago the commission increased the interest rate for gas utilities from 5 to 6 per cent and announced that other hearings would be held relative to increasing the rate for all other utilities but that hearing never was held. The gas company alleged that the other utility companies had continued under the 5 per cent rate and that it was entitled to a uniform rate.

Pennsylvania

Lower Gas Rates in Philadelphia

The price of gas to household consumers in Philadelphia is to be cut to an average of 88 cents a thousand cubic feet by the Philadelphia Gas Works Company, according to an announcement by Samuel M. Vauclain, chairman of the city gas commission, after a meeting attended by two other members, Conrad N. Lauer, president of the Philadelphia Gas Works Company, and Murtha P. Quinn, representing the city.

The retail price now charged by the subsidiary of the United Gas Improvement Company, which operates the city-owned gas plants, is 95 cents. The new rate was originally effective January 1st, but the city council was expected to authorize the reduction as of October 1st. The schedule approved by the commission was calculated to save consumers approximately $1,400,000.

Changes in the Pennsylvania Commission

Dr. Clyde L. King recently appointed by Governor Pinchot to membership on the Pennsylvania Public Service Commission was designated October 1st as chairman of the commission to succeed the late W. D. B. Ainey. Chairman King subsequently announced that no changes were contemplated in the personnel of the commission. The statement that no office force would be changed was welcomed by employees, according to the Philadelphia *Public Ledger*, many of whom feared that the change of control to the governor would mean numerous dismissals. Dr. King's announcement came as a result of numerous applications for positions.

On October 7th Governor Pinchot announced the appointment of C. Jay Goodnough as member of the public service commission to succeed Emerson Collins, recently resigned. Mr. Goodnough will take office on December 1st, at the expiration of his term as member of the state house of representatives of which he now is speaker. In the meantime Oliver K. Eaton, assistant district attorney from Pittsburgh, was designated by the senate special investigating committee to act as chief counsel in its forthcoming investigation of the state public service commission. It was also announced that John G. Hervey, the associate dean of Temple University Law School of Philadelphia,

had been selected by the senate committee to aid in drafting a new code for regulation of the utilities and to assist in the investigation. Mr. Hervey was a native of Hillsboro, Texas. He graduated from Oklahoma University in 1923.

South Carolina

Power Company Ordered to Submit Information

THE South Carolina Railroad Commission directed and requested officials of the Broad River Power Company and the Columbia Railway, Gas and Electric Company to furnish information for use in its current investigation of the power company's rates. The commission's order directed that the data should be furnished to its counsel, Irvine F. Belser, and to John M. Daniel, state attorney general, on or before October 4th, or as soon thereafter as possible. Included in the information asked was "the price paid by the General Finance Company, and/or General Gas and Electric Company, and/or W. S. Barstow and Company, to the late E. W. Robertson of Columbia, and persons and others in 1924, for the controlling stock in the Columbia Railway, Gas and Electric Company."

During the hearings on September 30th Counselor Belser in cross-examining J. M. Costello, treasurer of the Broad River Company, threatened to secure imprisonment orders against persons failing to give evidence and testimony sought by the commission, according to a news dispatch to the Columbia *State* published October 1st. The Columbia *Record* for October 4th carried a news dispatch stating that R. D. Jennison of New York, president of the Broad River Power Company had, by telegram to the commission, declined to furnish the information requested stating that he had no power to compel presentation of such evidence.

Tennessee

Federal Funds Sought for City Plant

A DOUBLE-BARRELED resolution, seeking a reduction of electric rates in the city of Knoxville as well as a reduction of unemployment distress, was introduced by City Councilman W. N. Smithson at a meeting of the council on October 4th, when he asked the city to approve a request of a $7,000,000 loan from the Reconstruction Finance Corporation to build a municipally owned light and power plant. Councilman Smithson declared that two years ago he served on a council committee which investigated the situation and found that an electrical system together with the distribution system could be installed by the city for that amount. At the rates being charged Mr. Smithson said that the municipal power plant could pay for itself in a maximum of ten years, and probably in less time. Mr. Smithson also claims to have investigated other cities about the size of Knoxville which owned their own electric plants. He said that all these cities showed a profit on their electric plants ranging from $250,000 to $1,000,000 a year.

Wisconsin

Utility Tax Allocation Outlined in Wisconsin

OF the $7,600,000 to be paid in taxes for 1932 by street railways, light, heat, and power companies and conservation and regulation companies, according to a statement issued by the state tax commission, towns, cities, and villages will receive more than $4,900,000, counties will receive $1,500,000, and the state will get the balance of about $1,100,000. The statement shows that street railways were assessed $287,850,000, on which the tax is $5,582,489. Light, heat, and power companies, privately owned, were assessed $82,964,000, tax $1,686,801; municipally owned properties assessed $724,850, tax $14,734. Conservation and regulation companies were assessed $2,650,000, tax $53,879.

The Latest Utility Rulings

Value of Service Superior to Utility's Right of Return

THE supreme judicial court of Maine has handed down a very important decision in sustaining an order of the Maine Public Utilities Commission which denied an increase in water rates of the Damariscotta-Newcastle Water Company. The company had applied for an increase in its established rates for hydrant service furnished to the town of Damariscotta. The commission found a rate base of $125,000 and estimated that the company's existing rates yielded a return of approximately 6.04 per cent and refused to grant the application. The company appealed, complaining that insufficient allowance was made for depreciation and that certain necessary items had been omitted from the operating expense account. In the opinion of the company the existing rates would yield little more than 5 per cent. The commission pointed to the falling prices of commodities and supplies and the reduced operating costs, and came to the conclusion that the reasonable worth of the service should not exceed its cost as the controlling factor in the case. The court summarized the three exceptions by the company as follows: (1) that the existing rates were unreasonable and confiscatory, and could not be enforced without violating the company's constitutional rights; (2) that the commission's finding as to the reasonable worth of the hydrant service was based upon inadequate evidence and erroneous principles of law; (3) that improper evidence was admitted. The court in overruling these exceptions held that if the rates charged by a public utility represent the maximum reasonable value of the service to the consumer, they cannot be held as a matter of law unreasonable or confiscatory as to the company "whatever may be the result upon its return." The court further held that findings of fact by the commission on the issue of the reasonable worth of a utility's service, if supported by any substantial evidence, are final and that a mere difference of opinion between the court and the commission in deductions from the proof or inference to be drawn from the testimony will not authorize judicial interference. *Gay v. Damariscotta-Newcastle Water Co.*

Commission Powers over Intercorporate Transactions Are Defined

APPEALS of the New Hampshire Gas and Electric Company and the Derry Electric Company, both units of the Associated Gas and Electric System, from orders of the New Hampshire Public Service Commission issued in 1931 after more than a year's investigation were sustained in a unanimous opinion handed down by the New Hampshire Supreme Court. The court grouped the various orders of the commission for consideration, as a matter of convenience, according to their subject matter. The net result of the court's opinion was to limit the commission's power over transactions between affiliated corporations. Judge Leslie P. Snow, who wrote the court's opinion, said that although the evidence, findings, and arguments covered a wide range, the issues of law directly presented involved the single question of

the extent of the powers vested in the commission. The court did find, however, that if the commission's primary findings and rulings on which the orders were based are well founded, the appellants have violated the several statutory provisions and are subject to penal prosecution. Under such circumstances the court thought that it would be the duty of the commission to lay the facts before the attorney general and direct him to begin an action in the name of the state rather than to attempt to correct such violations by the enforcement of its own orders, which was attempted in the case at bar.

The first grouping of commission orders considered by the court were those which forbade the two subsidiary operating utilities to pay any further sums to the J. G. White Management Corporation under contracts unless and until approved by the commission. Payment under contract for similar services rendered by the affiliated Associated Appliance Corporation, which specializes in selling appliances, were also restrained. The court held that it was unnecessary to determine whether on the evidence it could be found that contracts of the management company and other affiliated companies were "contracts" within the meaning of the public service law because, whether so interpreted or otherwise, the commission is still without authority to make the restraining orders affecting payments under such contracts. The court expressed no opinion as to the legality of the contracts themselves.

The second group of commission orders dealt with by the court directed the two operating subsidiaries to borrow no money on an "open account" basis from affiliated companies unless and until approved by the commission. In holding these orders unauthorized, the court said "whatever subsidiary purpose may have been in view it is apparent that the main object of the legislature was to establish and preserve a proper base for regulation of rates and service." The court held that the commission's orders would be unauthorized even if the open account could be found to be an "evidence of indebtedness" within the terms of the New Hampshire statute granting supervisory powers over such evidence of indebtedness to the commission.

The final group of orders considered dealt with the acquisition of the Derry Electric Company by the New Hampshire Gas and Electric Company. The orders forbade the New Hampshire Company to engage in business in the Derry territory and also directed the former to strike from its books all entries evidencing financial or other obligations made in connection with the "purported acquisition" of the Derry Company and to pay no sum either in interest or principal to acquire the franchises of the Derry Company unless and until further authorized by the commission. On this group the court held that although the facts indicated that the acquisition of the Derry property by the New Hampshire company was not approved as required by statute, the subsequent commission orders were nevertheless unauthorized.

The court repeatedly stressed the point that the commission's orders were void for want of statutory authority. It pointed out that the statute from which the commission's powers were derived gave the commission no machinery for the direct enforcement of its own orders, but instead expressly authorized the commission in proper cases to lay facts before the attorney general justifying the latter's action. The court believed that the commission may act like a grand jury and may present charges against the utility just as an information, and added that "in so far as the present proceedings are instituted in the exercise of this function, the findings and rulings of the commission have no force or effect except as they tend to persuade the commission that there is reasonable cause to invoke the action of the attorney general." *New Hampshire Gas & Electric Co. v. Public Service Commission.*

Commission Denies Power over Insull Holding Companies

THE various so-called Insull investment or holding companies which have recently collapsed were not public utilities and hence were not under the jurisdiction of the Illinois Commerce Commission, which has supervision only over public utilities actually operating, according to a statement issued by the commission and published in the *United States Daily* on September 29, 1932.

The statement was issued for the purpose of clearing the public mind of "apparent misunderstanding as to placing of responsibility for the recent collapse." It followed an announcement by State Representative J. W. Harris that he would introduce in the special session of the Illinois legislature a resolution for the investigation of the commission, which he claimed had jurisdiction over the securities of the investment enterprises. The commission's statement, which was made public by Chairman G. Gale Gilbert, stated:

> "The commission wishes it clearly understood that the so-called Insull holding companies are in fact not public utilities. The Illinois statutes, which created the commission, give the commission supervision only over public utilities actually operating and that render a utility service. Here it is obvious that the commission can have no supervision over nonpublic utilities such as those referred to.
>
> "Actual operating companies of the Insull group are public utilities, however, and are under the commission's jurisdiction.
>
> "With this thought in mind, the public should consider the fact that no one of the actually operating Insull electricity and gas companies is in receivership. All are operating. They are all solvent and financially sound. There has been no default on their bonds."

The statement concluded that the commission had no more authority to prevent the so-called Insull holding companies from purchasing blocks of stock of Insull companies than it would to prevent a private individual from buying such stocks on the open market. It was pointed out that holding companies' operations, even though leading to their own ultimate collapse, cannot be supervised or controlled by the commission under the prevailing state of the law and in the absence of further legislative action. *Statement by the Illinois Commerce Commission.*

Power Rates Held Not Applicable to General Appliance Service

THE Maine Public Utilities Commission has dismissed complaint brought by consumers against the Farmington Falls Electric Company and the Mount Vernon Light and Power Company, alleging that the schedule of rates filed by such companies with the commission on March 30, 1932, resulted in excessive charges. Both companies are under common ownership and management and maintain the same rates for service. The complaints were accordingly united by the commission for purposes of hearing.

It appeared that the new rate schedules were intended to operate as rate reductions and would so apply to customers in general. Certain customers, however, had adopted the practice, apparently with the tacit consent of the companies, of installing a second meter and obtaining energy at lower rates for general appliance service. Such power rates were intended to apply only to motor installations and then only to motor installations having a minimum capacity of one horsepower. It was the intention of the company, in filing the new schedules, to restrict the application of power service rates to motor installations and thereby to require customers to pay for lighting and general appliance service in accordance with appropriate rates for such service. As to such patrons the commission found that the new rates would in some cases result in an increase in charges. The

commission stated that it was apparent from the rate schedules that the power rates were not intended for services to which they had previously been applied in many instances, and that those patrons had in the past enjoyed rates to which they were not entitled.

The commission made no formal valuation of the properties of either of the companies for rate-making purposes but found, with the exception of depreciation charges, that the operating expenses were not excessive, and that the proposed rates would in no event yield more than 7 per cent return on the property value of the Farmington Falls Company, and that an operating deficit would probably continue to be experienced by the Mount Vernon Company. Under such circumstances the commission felt that the proposed rate schedules were not unreasonable. An annual depreciation allowance previously charged to operating expenses of the Farmington Falls Company of 6.23 per cent of the depreciable property was held to be excessive, and it was said that a reduction of that charge to 4 per cent would be reasonable. A similar reduction of the depreciation allowance of the Mount Vernon Light and Power Company from 6.7 per cent to 4 per cent on the property value was also indicated. *Russell v. Farmington Falls Electric Co.; Sproule v. Mount Vernon Light & Power Co.*

A Commission Ruling in the Columbus Gas Rate Case

By a two-to-one vote the Ohio Public Utilities Commission has approved a gas rate of 55 cents a thousand cubic feet for the city of Columbus terminating one of the most important gas rate controversies in the history of the commission. The existing rate is 38 cents a thousand cubic feet.

Three subsidiaries of the Columbia Gas & Electric Corporation were involved in the commission's action, the Columbia Gas & Fuel Co., the United Gas & Fuel Co., and the Ohio Fuel Gas Co. The case has been before the commission for more than two years and was being watched closely by every city in the state.

Commissioners E. J. Hopple of Cleveland, chairman, and Frank W. Geiger of Springfield signed the majority opinion, while a minority report was prepared by Commissioner John W. Bricker favoring a rate of approximately 48 cents. Certain allowances made in the majority report are likely to be contested, according to a dispatch in the *Wall Street Journal*, and the case will probably be taken to the Ohio Supreme Court. Meanwhile the 48-cent rate will be continued. The majority report grants certain allowances on depreciation, delayed rentals on reserve acreage, and working capital, and also allows the gas companies to charge as an operating expense the cost of prosecuting the rate case.

The value of the properties of the Ohio Fuel Gas Company (the distributing company) was fixed by the majority opinion as $74,538,280, and by Commissioner Bricker's dissenting opinion at $72,534,287. The company claimed a value of $140,364,827, while the city of Columbus contended that the value was not more than $63,138,260. The "gate rate" of Columbus was fixed by the majority opinion at 39.02 cents per thousand cubic feet while Commissioner Bricker favored a rate of 31.70 cents. The company contended for a gate rate of 61.61 cents, and the city for a gate rate of 26.35 cents.

Governor White of Ohio in a statement published in the Columbus *Citizen* of October 3rd revealed that he personally had hoped that the rate would be fixed at not more than 48 cents. He likewise declared that he hoped that the city would appeal the decision as speedily as possible so as to guide the commission in similar future cases. *Re Columbia Gas & Fuel Co. et al.*